

**Banyule Planning Scheme Amendment C107bany
Treetop Adventure Park, Yarra Flats Park, Ivanhoe East**

Panel Report

Planning and Environment Act 1987

19 August 2021

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning and Environment Act 1987

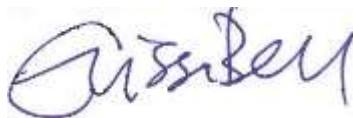
Panel Report pursuant to section 25 of the PE Act

BBanyule Planning Scheme Amendment C107bany

19 August 2021



Tim Hellsten, Chair



Elissa Bell, Member

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Glossary and abbreviations

2013 Concept Plan	<i>Yarra Flats Park, Revised Concept Plan 2013, Parks Victoria</i>
2021 Flora and fauna assessment	Flora and fauna assessment, Native vegetation impact assessment and land management plan, Yarra Flats Treetop Adventure Park, Ivanhoe East (Practical ecology, June 2021)
AH Act	<i>Aboriginal Heritage Act 2006</i>
Amendment	Banyule Planning Scheme Amendment C107bany
AS	Australian Standards
Bulleen LUFP	<i>Draft Yarra River – Bulleen Precinct Land Use Framework Plan, DELWP 2020</i>
CHMP	Cultural Heritage Management Plan
Council	Banyule City Council
CVS	<i>Bulleen-Banyule Flats Cultural Values Study Overview Document, Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation and DELWP, 2020</i>
DELWP	Department of Environment, Land, Water and Planning
ESO	Environmental Significance Overlay
EVC	Ecological Vegetation Class
Exhibited Flora and fauna assessment	Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan, Yarra Flats Treetop Adventure Park, Ivanhoe East (Practical Ecology, December 2018)
FMP	Fauna Management Plan
Incorporated Document	<i>Treetop Adventure Park, 340-680 The Boulevard, Ivanhoe East September 2020</i>
LSIO	Land Subject to Inundation Overlay
March Addendum	Addendum to the Flora and fauna assessment, native vegetation impact assessment and land management plan, Yarra Flats Treetop Adventure Park, Ivanhoe East Report (24 March 2021)
NELP	North East Link Project
OMP	Operational management practices
PCRZ	Public Conservation and Resource Zone
Proponent	Ecoline Pty Ltd

RCSH	Riverland Conservation Society of Heidelberg Inc
SCO	Specific Controls Overlay
SLO	Significant Landscape Overlay
the PE Act	<i>Planning and Environment Act 1987</i>
the YRP Act	<i>Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017</i>
TMPP	Tree Management and Protection Plan
TPZ	Tree Protection Zone
VTA	Visual Tree Assessment
Wurundjeri Woi wurrung CHAC	Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation
YPPA	Yarra Precinct Protection Association
YSP	Yarra Strategic Plan

Overview

Amendment summary

The Amendment	Banyule Planning Scheme Amendment C107bany
Common name	Treetop Adventure Park, Yarra Flats Park, Ivanhoe East
Brief description	Apply the Specific Controls Overlay (Schedule 13) to the subject land and amend the schedules to Clause 45.12 Specific Controls Overlay and Clause 72.04 Incorporated Documents to include reference to the 'Treetop Adventure Park, 340-680 The Boulevard, Ivanhoe East September 2020' Incorporated Document
Subject land	340-680 The Boulevard, Ivanhoe East
The Proponent	Ecoline Pty Ltd
Planning Authority	Banyule City Council
Authorisation	31 August 2020 conditional
Exhibition	29 October – 7 December 2020
Submissions	Number of submissions: 217 Opposed: 203 (including 8 providing conditional support only) See Appendix A

Panel process

The Panel	Tim Hellsten (Chair), Elissa Bell
Directions Hearing	10 May 2021 by videoconference
Panel Hearing	5, 6, 7, 8 and 9 July 2021 by videoconference
Site inspections	Unaccompanied, 3 May 2021
Parties to the Hearing	See Appendix B
Citation	Banyule PSA C107bany [2021] PPV
Date of this report	19 August 2021

Executive summary

Banyule Planning Scheme Amendment C107bany (the Amendment) seeks to apply the Specific Controls Overlay (SCO) to the north-eastern corner of Yarra Flats Park, Ivanhoe East to facilitate the use and development of the land, which is zoned Public Conservation and Resource Zone (PCRZ), for an outdoor recreation facility (treetop adventure park), removal of native vegetation and display of advertising signage generally in accordance with the document titled Treetop Adventure Park, 340-680 The Boulevard, Ivanhoe East September 2020' (Incorporated Document).

The Proponent for the Amendment is Ecoline Pty Ltd which operates similar ropes and wire courses in Victoria (Glen Harrow Park, Belgrave) and interstate. The Amendment was sought because the use is likely prohibited as it is not conducted by or on behalf of a public land manager (Parks Victoria in this instance). The subject land was one of five sites across Victoria identified in a Parks Victoria Expression of Interest process for the operation of a tree based eco adventure facility and was also identified in the *Yarra Flats Park Revised Concept Plan 2013*.

The area to be used for the adventure course is located at the eastern end of an existing access road and carpark area and adjoining a bend in the Yarra River, south of Banksia Street. The flood prone site's features include well established river red gums and the Banksia Billabong. Annulus Billabong is located to the south of the site. Walking tracks extend through and around the site. The area is part of a wider area identified for its Aboriginal cultural values to the Wurundjeri Woi wurrung people and its post-contact heritage, aesthetic and social values including its associations with the Heidelberg School of Artists.

203 submissions opposed the Amendment. Key issues raised included:

- lack of strategic justification
- consistency with the PCRZ and Overlays that apply to the site
- consistency with the objectives and principles of the Yarra River Protection (*Wilip-gin Birrarung murrn*) Act 2017 (the YRP Act) and draft Yarra Strategic Plan (YSP) and the draft Yarra River – Bulleen Precinct Land Use Framework Plan (Bulleen LUFP)
- the private commercial use and alienation of public land
- impacts on the landscape, native vegetation, billabongs and habitat values
- Aboriginal cultural heritage
- traffic and parking
- flooding and drainage
- public safety
- extent of the SCO
- process issues including the responsibilities of Parks Victoria and Council and level of consultation and notice.

At the Hearing the Panel received detailed, well presented and articulate submissions from Council, the Proponent and submitters as well as extensive evidence on ecology including fauna and flora, soils and arboriculture in addition to town planning and traffic evidence. These provided the Panel with a clearer picture of the proposal, the issues and potential impacts.

While not unimportant, the Panel considers that the issues of traffic and parking, signage, amenity, flooding and drainage and safety to be secondary issues capable of management through the Incorporated Document. For the Panel, the more determinative issues are the level of

consideration given to Aboriginal cultural heritage and the ecological impacts of the proposal, particularly in the context of the more recent YRP Act, draft YSP and the draft Bulleen LUFP.

Strategic justification

The Panel concludes that the proposed use and development is an appropriate one on public land and is broadly consistent with its reservation status and location within the PCRZ.

Having regard to the Yarra River protection principles, the Panel considers there are two threshold issues which need to be resolved prior to the adoption of the Amendment. These issues are:

- the current lack of partnership with the Traditional Owners and the appropriate consideration of potential cultural heritage impacts
- the provision of offsets consistent with Clause 52.17 of the Planning Scheme.

Provided these matters are resolved, the Panel considers the Amendment to be appropriate, having regard to the Yarra River protection principles, the YRP Act and the draft YSP.

The application of the SCO is an appropriate approach and ensures that the underlying zoning and public land status of the land remains.

The Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework and is strategically justified subject to addressing a range of potential impacts including on cultural heritage and ecology.

Cultural heritage

The Panel considers the approach to cultural heritage to date has been unsatisfactory. A due diligence approach to cultural heritage is not consistent with processes set up under the Aboriginal Heritage Act 2006. In this case it has resulted in the undesirable outcome of the potential impact on cultural heritage being unknown and a failure to appropriately consult with the Registered Aboriginal Party the Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation (Wurundjeri Woi wurrung CHAC) on their cultural heritage. The submission of the Wurundjeri Woi wurrung CHAC and a Cultural Values Study indicates the importance of this area has not been adequately addressed.

Further, despite best efforts, the proposal has not been developed with the partnership and representation of the Traditional Owners that is anticipated by the Yarra River protection principles. This is a missed opportunity for a partnership approach in the management of the subject land.

It is imperative that Parks Victoria, Council and the Proponent initiate discussions with the Wurundjeri Woi wurrung CHAC to clarify the nature and extent of the significance of this area and to determine if a suitable outcome can be achieved which respect to culture and country, and to realise potential opportunities for the Wurundjeri Woi wurrung from this proposal. Considering the stated role of DELWP in implementing the outcomes of the Cultural Values Study, it is considered they should be involved as well. If discussions indicate mutual support for proceeding, and a Cultural Heritage Management Plan (CHMP) is considered a suitable next step, then it should be approved prior to the adoption of the Amendment and Council should only adopt the Amendment if it is consistent with the approved CHMP.

Ecological impacts

The proposal will result in a small amount of native vegetation being destroyed, lopped or removed (calculated loss of 0.414 hectares). The Panel notes no trees will be removed. This native vegetation has been appropriately assessed consistent with the relevant guidelines.

The Panel does not consider the relevant Incorporated Document adequately addresses the requirement for an offset statement. It is unknown if or where offsets can be achieved although there is a level of comfort that they will be feasible to achieve. Considering that the Incorporated Document will switch off other planning controls it is important this issue is resolved prior to adoption of the Amendment. Consistent with the approach for a permit, the Panel considers the Incorporated Document should include a condition specifying the offsets to be provided and preventing any native vegetation removal until evidence of secured offsets is provided.

The Panel considers the potential impacts on trees, fauna and habitat to be minor in nature. There is the potential for the proposal to reduce the potential habitat benefits from Melbourne Water's planned wetland works, however this is not something the Panel can conclude based on the evidence before it.

Having regard to the environment protection principle under the YRP Act, the Panel does not consider the proposal will achieve a net gain for the environment. The Panel does not consider the current legislative framework establishes a test for this such that it is a threshold issue. The Panel has however considered how the potential impacts can be mitigated as much as possible through its recommendations and considers the likely impact to be minor.

Traffic and parking

Based on the traffic evidence, the Panel considers that the proposal will have negligible impact on traffic activity, the traffic network, or the availability of carparking for other users or future activities. The Incorporated Document should be amended to provide greater direction for the provision and management of car, bus and bicycle parking.

Other issues

In relation to the other issues raised in submissions the Panel concludes:

- The extent of the SCO is appropriate, but the Incorporated Document should be amended as proposed by Council to clarify its application to the Treetop Activity Area.
- The Incorporated Document through the Preliminary Signage Strategy provides for an appropriate signage outcome but the signage strategy should be updated to finalise signage details including location and how signage will be managed within TPZs with the Incorporated Document updated to refer to the final version of the strategy.
- The Amendment and Incorporated Document (as amended) appropriately responds to the impacts of flooding and stormwater drainage although further discussions are required with Melbourne Water to refine conditions regarding flooding and to establish a trigger point for closure of the operation during flood events.
- The Incorporated Document (as amended) provides appropriate mechanisms to respond to safety issues.
- The proposal will not result in a significant negative impact on the amenity of the park and adjoining areas for its users and local residents.
- Council and Parks Victoria have appropriately discharged their responsibilities as planning authority and public land manager in regards this Amendment.

- Appropriate notice of the Amendment was given.

Incorporated Document

During the Hearing the Council provided a Final Incorporated Document for the Panel's consideration¹. The Proponent provided its own version based on Council's version.² Two submitters provided comments and suggestions based on Council's final changes on a 'without prejudice' basis. Their efforts in doing this were appreciated by the Panel and assisted it in its considerations of the document. The Panel has included a Panel preferred version of the Incorporated Document in this Report (Appendix D) which includes a number of changes to respond to particular submissions, the evidence of Mr Glossop and Mr Patrick as well as other more general corrections and suggested improvements. The Panel preferred version has used Council's Final Incorporated document as its basis.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Banyule Banyule Planning Scheme Amendment C107bany be adopted as exhibited subject to the following:

- 1. Before adopting the Amendment, Council facilitates discussions between itself, Parks Victoria, the Proponent, the Department of Environment, Land, Water and Planning and the Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation to determine whether an appropriate outcome can be achieved for the site through a Cultural Heritage Management Plan process.**
- 2. Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document, as shown in the Panel preferred version in Appendix D, and in addition:**
 - a) Include a condition regarding the closure of the adventure course under particular flood conditions, to be drafted in consultation with Melbourne Water.**
 - b) Amend the Melbourne Water conditions following further discussions with Melbourne Water to review and clarify proposed conditions including those relating to earthworks, fencing and stairs.**
- 3. Amend the Preliminary Signage Strategy TreeTop at Yarra Flats by Treetops, June 2017 Incorporated Plan to:**
 - a) Confirm the number, dimensions and locations of all signs including details of supporting posts.**
 - b) Identify how signage will be managed within Tree Protection Zone areas.**
- 4. Amend the Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan, Yarra Flats TreeTop Adventure Park, Ivanhoe East (Practical Ecology, June 2021) to:**
 - a) Provide a detailed offset statement that addresses Application Requirement 9 of the Guidelines for the removal, destruction and lopping of native vegetation (DELWP, 2017a), in consultation with DELWP and to the satisfaction of the Responsible Authority.**

¹ Document 164

² Document 185

- b) Detail the intent, role and design of the proposed Fauna Management Plan consistent with Mr Kern's evidence.**
- 5. Amend the Schedule to Clause 72.04 to include the amended date of the final Treetop Adventure Park Incorporated Document.**

1 Introduction

1.1 The Amendment

(i) Amendment description

Banyule Planning Scheme Amendment C107bany (the Amendment) proposes to apply the SCO to land in the north-eastern corner of the Yarra Flats park, at 340-360 The Boulevard, Ivanhoe East. The Amendment will facilitate the use and development of the land for an outdoor recreation facility (treetop adventure park), removal of native vegetation and display of advertising signage, generally in accordance with an Incorporated Document which sets out conditions for its operation.

Specifically, the Amendment involves:

- applying the SCO (Schedule 13) to the subject land
- amending the schedules to Clause 45.12 (SCO) and Clause 72.04 (Incorporated Documents) to include reference to the *'Treetop Adventure Park, 340-680 The Boulevard, Ivanhoe East September 2020'* (Incorporated Document).

The Amendment has been prepared by the Banyule City Council (Council) at the request of the Proponent, Ecoline Pty Ltd.

(ii) The subject land

The Amendment applies to land shown in Figure 1 (light blue polygon area). The subject land is Crown Land and part of the Yarra Flats park and more particularly described as:

- the eastern portion of Crown Allotment 2E within the Parish of Keelbundora, created by instrument MI121222X, as shown in Crown Diagram CD048476M (reserved for Public Park and Recreation), and
- the north-eastern portion of Crown Allotment 2H within the Parish of Keelbundora, created by instrument MI121225R, as shown in Crown Diagram CD048477K (reserved for Conservation, Recreation, Leisure and Tourism).

Yarra Flats is an 85 hectare park which features natural bushland, wetlands and a number of informal picnic areas and is nestled between the Yarra River to the east, The Boulevard to the west and Banksia Street to the north. The proposal involves the use of the eastern 1.5 hectare portion of the subject land (shown within red dashed polygon in Figure 1) for the treetop adventure park (activity area).

The portion of the subject land to be used for the treetop adventure park is heavily vegetated with large canopy trees and dense undergrowth and shrubbery. The vegetation in the activity area and the adjoining parklands is categorised as Ecological Vegetation Class (EVC) 'Floodplain Riparian Woodland' with a predominantly indigenous tree layer, mostly exotic shrub layer and a significantly disturbed ground storey dominated by exotic weeds.³ The activity area is dominated by river red gums with 15 trees graded 'Large Old Trees'.

³ Fauna and Flora Assessment, Native Vegetation Impact Assessment and Land Management Plan, Practical Ecology, December 2018

The eastern portion of the subject land includes carpark areas and a closed toilet block. Access to the subject land is from an existing entry road off The Boulevard which is closed between 6.00 pm (9.00 pm in daylight saving periods) and 6.00 am.

The closest dwellings are located along Bulleen Road to the east (420 metres) and along The Boulevard to the west (470 metres). The Bulleen Industrial Park is located to the east (within 400 metres).

Figure 1 **Subject land**



Source: Incorporated Document Figure 1

(iii) The proposal

The proposal involves the establishment of a self-guided high ropes course within the established tree canopy. It comprises eight courses of differing grades of difficulty and:

- a removable administration office (18.2 by 10.2 metres) constructed on site using two timber clad shipping containers, an overhead roof shelter and timber decking
- a high ropes course comprising rope ladders, bridges, tunnels and cargo nets interspersed with zip lines and landing platforms
- upgrading the existing toilets on site which will be opened to the public
- retention of all trees with minimal undergrowth trimming and branch removal for patron safety
- weed removal and dead wooding being undertaken to regenerate the area
- use of an existing car park and reopening an existing closed off area, providing 127 car spaces
- signage (one business identification, two external directional signs, gate entry sign and various internal directional, interpretation and administrative signs).

No site fencing is proposed as part of the development.

The treetop adventure park is proposed to operate 7 days a week, 364 days per year (closed on Christmas Day) with operating hours generally between 9.00 am and 6.00 pm (with seasonal variations). It is anticipated that the facility will cater for children and adults, around 15 patrons starting 30 minutes apart (with a maximum of 100 people on course at any one time). Patrons are expected to remain on course for around 1.5 to 2 hours.

The Proponent proposes to operate on the activity area with a lease from the public land manager, Parks Victoria. This follows a Parks Victoria Expression of Interest process to develop and operate a tree based eco adventure facility on five sites across Victoria including the subject land. The subject land is also identified for use as a tree based adventure course (with Ecoline identified as the operator) in the 2013 Concept Plan prepared by Parks Victoria in association with Council and Melbourne Water. The Proponent has designed and operates similar facilities in Victoria (Belgrave) and New South Wales (refer examples in Figure 2) under the operating name 'TreeTops'.⁴

Figure 2 Examples of Ecoline rope courses



Source: Ecoline Pty Ltd, September 2020

The Amendment is required as the treetop adventure park will be managed by a private operator and not directly by Parks Victoria itself which potentially renders the use prohibited under the PCRZ that applies to the subject land. The SCO is proposed to allow the proposal to occur.

The Amendment request was supported by a number of technical reports and documents:

- Planning report, Perry Town Planning Pty Ltd, 7 October 2020
- Aboriginal Heritage Due Diligence Report, Heritage Insight Pty Ltd, September 19, 2018
- Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan, Practical Ecology, December 2018
- Arboricultural Tree Health and Hazard Report, Advanced Treescape Consulting, 31/08/2018 and addendum of 25 February 2019

⁴ Amendment documents, technical reports and evidence interchangeably as 'treetops', 'Treetops' or 'TreeTops'. The Panel's use of these terms replicates their use in the relevant documents referred to wherever possible.

- Biodiversity impact and offset requirements report, DELWP, 28/07/2016
- Native vegetation removal report, DELWP, 9/11/2018
- Site and Administration Office Plans, Ecoline Pty Ltd, September 2020
- TreeTops at Yarra Flats, Ecoline Pty Ltd, September 2020
- Transport Impact Assessment, onemilegrid, 31 May 2016
- Preliminary Signage Strategy, TreeTops, June 2017
- Pre-development advice from Melbourne Water, 26 April 2017
- Parks Victoria letter of support, 30 April 2018.

(iv) Incorporated Document

The Incorporated Document exempts the proposal from requiring a planning permit and the provisions of the Banyule Planning Scheme. It allows the use and development of the land for an outdoor recreation facility (treetop adventure park), removal of native vegetation and display of advertising signage generally in accordance with the conditions set out within it. It includes a site plan at Figure 2 (Version 7 dated 22/09/20).

The exhibited Incorporated Document includes conditions relating to:

- general matters relating to the preparation of various plans before the commencement of use and development (conditions 6.1 and 6.2)
- landscaping, including revegetation and supplementary planting consistent with the Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan and Arboricultural Tree Health and Hazard Report (conditions 6.3 to 6.5)
- preparation of a Tree Management and Protection Plan (TMPP) (conditions 6.6 to 6.8)
- ensuring buildings and works do not alter the ground level (conditions 6.9)
- tree protection and landscaping including the establishment of Tree Protection Zones (TPZ), appropriate management of TPZ areas including weed control, fencing, signage, ground protection and access, conditions regarding vegetation removal and pruning (conditions 6.10 to 6.13)
- amenity including operation and appearance of the site, lighting, rubbish bins and noise including no sound amplification or loudspeakers (conditions 6.14 to 6.19)
- hours of operation (condition 6.20)
- carparking (condition 6.21)
- signage including consistency with the Preliminary Signage Strategy (conditions 6.23 to 6.25)
- provision of a Construction Management Plan (conditions 6.26 and 6.27)
- no barbeques and fireplaces (condition 6.28)
- environmental weeds (condition 6.29)
- completion of ropes course (condition 6.30)
- Melbourne Water conditions (conditions 6.31 to 6.36).

The Incorporated Document sets out expiry provisions which include termination of the lease and a series of notes relating to other approvals.

1.2 Background

Table 1 sets out a chronology of events relating to the identification of the site for an outdoor recreation facility and the Amendment.

Table 1 Chronology of events

Date	Event
November 2008	Yarra Valley Parklands Management Plan prepared by Parks Victoria identifies the northern section of Yarra Flats park as an area for recreation and to investigate innovative ways to improve the visitor experience at Yarra Flats
September 2009	Parks Victoria issue an Expression of Interest (EOI 1267) for the Establishment and operation of tree based eco adventure facilities at five locations including the northern section of Yarra Flats park
26 April – 31 May 2012	Community consultation on the draft Yarra Flats Concept Plan. The concept plan included a tree based eco adventure course at the site
2013	Following community consultation, a revised Yarra Flats Concept Plan was prepared by Parks Victoria in association with Council and Melbourne Water
2014	Preliminary discussions between Council officers and planning consultants acting on behalf of the proponent
2014-2018	Ongoing discussions between the Proponent and various organisations including Melbourne Water, Parks Victoria, DELWP and Council
11 May 2018	Request from the Proponent to prepare a combined Amendment and Planning Permit
7 October 2019	Council resolves to seek authorisation to prepare and exhibit a planning scheme amendment
20 July 2020	Amendment authorised with conditions that Council: <ol style="list-style-type: none"> 1. Remove the s96A permit from the amendment and place all relevant conditions into the incorporated document. ... 2. Make necessary consequential changes to the amendment documents. 3. Change the amendment to insert the incorporated document ('Tree Top Adventure Facility, 340-680 The Boulevard, Ivanhoe East, May 2018') in the Schedule to the Clause 45.12 (Specific Controls Overlay) and Clause 72.04 of the Banyule Planning Scheme and provide planning scheme maps for the land to which the Specific Controls Overlay applies. 4. Amend the incorporated document as necessary to address the changes required by conditions of this authorisation, including the use of the Specific Controls Overlay and the removal of the planning permit.
29 October - 10 December 2020	Amendment exhibited
1 March 2021	Council considered submissions and resolved to refer them to a Panel
10 May 2021	Directions Hearing

1.3 Summary of issues raised in submissions

Council received 217 submissions in response to exhibition of the Amendment (including a submission from DELWP not previously identified by Council as a submission and late submissions

from the Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation, Blue Light Victoria and Nanette Esparon). Thirteen supporting submissions were received. The remaining submissions opposed the Amendment or sought changes, identifying the following issues:

- the strategic basis for the Amendment including that it is:
 - not strategically justified
 - inconsistent with legislation, planning policies and provisions
 - contrary to the purposes of the PCRZ
- the use of the land including:
 - its commercial use
 - its retention as parkland for passive recreation and conservation
 - uncertainty about what will occur on other parts of the site
- potential for impacts on:
 - other park users and public access
 - Aboriginal cultural heritage and historic heritage values
 - native vegetation, fauna and habitat values
 - Banksia Billabong
 - traffic and parking
 - flooding and drainage
 - character and amenity
 - cumulative impacts including from the North East Link project
 - anti-social behaviour
 - public safety issues during construction and operation
- process issues including:
 - the responsibilities of Parks Victoria as public land manager
 - Council's commercial interests
 - insufficient public consultation.

1.4 Procedural issues

(i) Conduct of Hearing

The Panel advised parties that it would be conducting the Hearing by video conference using MS Teams due to physical distancing restrictions associated with the coronavirus disease pandemic. No party objected to this hearing format and all parties present at the Directions Hearing indicated a preference for it, given the number of parties and interested submitters.

(ii) Panel constitution

On 15 March 2021 Con Tsotsoros (Chair) and Elissa Bell were appointed to the Panel. The Panel was reconstituted on 24 March 2021 to Tim Hellsten (Chair) and Elissa Bell due to the unavailability of Mr Tsotsoros for Council's preferred Hearing dates in June.

(iii) Hearing timing

The Directions and Panel Hearings were originally pre-set for the weeks commencing 8 March 2021 and 12 April 2021, respectively. Due to the high number of submissions received, Council's request for a Panel dated 5 March 2021 indicated a preference for the matter to be set for directions in late April/early May 2021 with a full hearing to be scheduled for June 2021.

Once appointed, the Panel set the Directions Hearing for Monday 10 May 2021 and for the Hearing to commence in the week of 7 June 2021. At the Directions Hearing, Council and the Proponent expressed a desire for the Hearing to be delayed to accommodate various participants' availability and allow early circulation of Council's Part B submission. All other parties were flexible with their timing and this was appreciated by the Panel. To accommodate all requests, the Hearing was set for 5 July 2021.

(iv) Late submissions and requests to be heard

At the Directions Hearing, Council confirmed that three late submissions of the Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation (Wurundjeri Woi wurrung CHAC), Blue Light Victoria and Nanette Esparon had been referred to the Committee for its consideration.

The Yarra Riverkeeper Association (submitter 185) lodged a late request to be heard on 14 May 2021 which was accepted by the Panel. A further request to be heard received from Allison Williams (submitter 42) on 21 June 2021, was also accepted.

(v) Representation of parties and additional witnesses

Following the Directions Hearing it became apparent to the Panel that a submission had not been received from the Save Yarra Flats Park Inc who Mr David Gentle (submitter 112) indicated he was representing. He advised he would be making his own submission with a second part of his submission presented by Mr Daniel Robinson of Counsel leading ecological evidence.

Following the Directions Hearing Mr Lees for the Riverland Conservation Society of Heidelberg Inc (RCSH) (submitter 169) sought for additional evidence to be provided by Professor Owen Richards on hydrology.⁵ The Panel was satisfied that Mr Lees had demonstrated a sufficient link in his initial submission to the issue of soil hydrology to call the additional witness.

Parks Victoria advised the Panel on 25 June 2021 that it would no longer be attending the hearing and would be making a further written submission instead. This was received on 28 June 2021.⁶

(vi) Provision of additional information

On 11 May 2021 at the direction of the Panel, Council provided links to the following documents:

- *Banyule City Council Biodiversity Plan 2019-2022*
- *Banyule Wildlife Corridor Program 2000*
- *Healthy Parks Healthy People Framework 2000, Parks Victoria*
- *Middle Yarra River Corridor Study Recommendations Report October 2016*
- *Middle Yarra River Concept Plan 1993*
- *Yarra Flats Concept Plan 2013*
- *Yarra River Strategic Plan (draft)*
- *Yarra River Protection Act 2017*
- *Yarra River – Bulleen Precinct Land Use Framework Plan (draft)*
- *City of Banyule Economic Development Plan 2015-20*
- *Victorian Visitor Economy Strategy*
- *Bulleen-Banyule Flats Cultural Values Study Summary Report*

⁵ Document 6

⁶ Document 63

- Copy of all submissions referred to the Panel (personal details redacted).

In response to requests from Ms Alicia Curry (submitter 209) for various flooding reports and mapping, Council provided a series of documents:⁷

- Stormwater Management – Municipal Wide Flood Mitigation Assessment, Engeny Water Management, January 2014
- Council report on the flood mitigation strategy dated 17 February 2014.

Council advised that its 2021 municipal wide flood catchment modelling study was currently being reviewed by Council and not yet publicly available.

On 27 May 2021, in response to the Panel's request, Council provided an outline of how it intended to engage with the Wurundjeri Woi wurrung CHAC prior to the commencement of the Hearing to address issues raised in their submission.⁸ This outline included an intent for it and Parks Victoria to meet with representatives of the Wurundjeri Woi wurrung CHAC.

At the request of Mr Gentle (submitter 112), Parks Victoria provided a copy of *Expression of Interest, EOI 1267, Establishment and operation of Tree Based Eco Adventure Facilities, September 2009* for five selected sites including Yarra Flats. The document included 'Annexure A - Development Considerations and Parameters'.⁹

On 17 June 2021, the Proponent provided more legible drawings in a response to a Panel direction. These plans included elevation and footprint plans of the reception building and home tree decking and an amended site plan – Version 10 dated 15/06/21 (Figure 3 which is reorientated and manipulated to fit within this Report).¹⁰

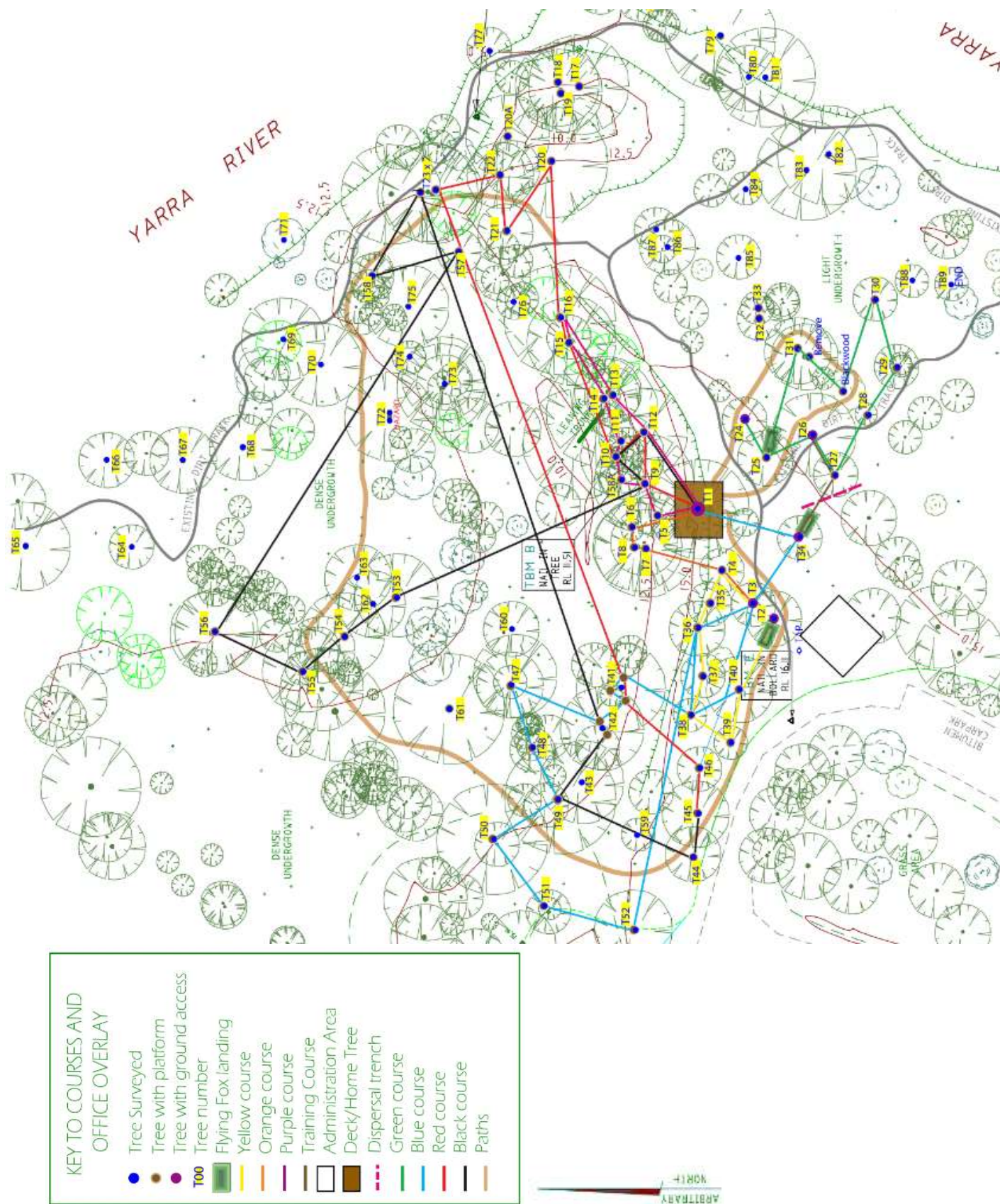
⁷ Documents 16a, 16b, 16c, 16g, 16h, 25a, 25b, 25c and 25d

⁸ Document 26

⁹ Document 21a

¹⁰ Documents 31, 32, 33 and 34

Figure 3 Amended course and site layout



The amended site plan identified existing vegetation, proposed rope courses, tree and landing platforms and the new location of the administration area. Changes to the site plan included:

- green shaded area removed
- elevation lines removed
- tree T58A added to remove confusion of 2 trees numbered T58
- trees T59-T89 numbered and surveyed by Andrew Patrick
- Home Tree shaded in Brown
- Red course amended
- Trees T17-T19 removed from the design
- Home Tree and administration area separated with the administration area (ticket office) relocated closer to the cleared area near the eastern most car park
- tree numbers highlighted yellow
- paths slightly extended to connect with the Home Tree.

(vii) Amended Incorporated Document versions

Council's Part A and B submission to the Panel included a 'Day 1 Hearing version'¹¹ of the Incorporated Document incorporating the following changes to the exhibited version:

- amended description of what the document allows including corrections or updates to particular plans and documents
- the amended course and site layout plan and elevation/floor plans
- additional general sub-conditions (at 6.2) to include Melbourne Water condition regarding flood management and other additional plan requirements including a Site Specific Safety Management Plan
- corrected document references at conditions 6.3, 6.4 and a renumbered 6.13
- a new condition 6.6 requiring a Fauna Management Plan (FMP) and associated condition renumbering
- a new condition 6.15 limiting the extent of pruning
- a new condition 6.24 requiring a Green Travel Plan
- a new condition 6.33 requiring works to be clear of AusNet Transmission Group transmission lines consistent with AusNet's submission (submitter 212)
- an amended (renumbered condition 6.36) relating to the use of the shipping containers for equipment storage and noting flood inundation
- a new condition 6.41 requiring an agreement to be entered into with Melbourne Water and Parks Victoria regarding site inundation and management of flows to respond to Melbourne Water's submission (submitter 213)
- other minor wording corrections.

These changes were largely accepted by the Proponent subject to minor wording changes and so these were accepted as a base for further iterations.

Council provided a tracked change and clean 'Day 2 Hearing version' of the Incorporated Document to respond to issues raised in submissions and questions from the Panel.¹² The

¹¹ Document 36 and 41 Appendix 5

¹² Documents 164 and 165

Proponent provided a response version.¹³ The Panel has identified these documents as either the Council's or Proponents 'Final Incorporated Document'. The key changes in the Final Incorporated Document versions are discussed in the Panel's Report against the pertinent submission issues and in Chapter 8. There was a level of agreement between Council and the Proponent for many of the changes proposed. Because of this, the Panel has used Council's Final Incorporated Document as the base for its preferred version in Appendix D.

1.5 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed all material provided and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Strategic justification
- Cultural heritage
- Ecological values
- Traffic and parking
- Other issues
- Form and content of the Incorporated Document.

1.6 Limitations

Ninety-nine submissions raised concerns about the Amendment's support for the commercial use of public land with many suggesting the proposal be relocated somewhere else. The Panel considers that the commercial use of public land per se is not a planning issue or an issue it can consider. Rather it is a government policy issue, permissible through leases and consistent with leases being issued for a wide range of commercial uses on public land across the state. The Panel's report does not discuss whether the commercial use of public land in this instance is appropriate or not, rather it has focused on the nature of the proposed use and its impacts in the context of planning policy, relevant strategies and legislation. It is similarly not the role of the Panel to comment on alternative locations for the proposal, but rather to consider the relative merits of the Amendment.

Three submissions raised concerns that notice of the Amendment was inadequate, Amendment documents did not set out all elements of the proposal, the Council website misleading or documents difficult to find and that no public meetings were held. The Panel considers that these submissions are not relevant as they are not 'about the Amendment' and do not raise planning

¹³ Document 185

issues. The Panel observes however, that Council's notification of the Amendment met its statutory notice obligations, and it was apparent that the Amendment garnered a large number of submissions suggesting that the community was well aware of the proposal. It is difficult to conclude that a different notification process would have elicited a wider range of community perspectives and issues. The Panel acknowledges that there was a lot of supporting material provided for this application and this may have been difficult for the wider community to easily understand the impacts of the proposal. Nonetheless it considers the information provided with the application was comprehensive and accessible on Council's website.

2 Planning context

2.1 Planning policy framework

Council and the Proponent submitted that the Amendment is supported by the *Planning and Environment Act 1987* (the PE Act) and various clauses in the Planning Policy Framework, Municipal Strategic Statement and Local Planning Policy Framework which the Panel has summarised below.

(i) Victorian planning objectives

The Amendment is in accordance with the objectives of planning in Victoria as set out in section 4(1) of the PE Act and their implementation as required by section 12(1)(a) and implements the following objectives:

- (a) to provide for the fair, orderly, economic and sustainable use, and development of land;
- (b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
- (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
- ...
- (g) to balance the present and future interests of all Victorians.

The Amendment addresses these objectives by:

- providing for the protection of the environmental values of the site by maintaining, supporting and protecting the natural environment
- providing for a tourism use of the land that provides positive economic and social benefits to the area
- providing for a recreational use for the residents and visitors of the broader area.

(ii) Planning Policy Framework

Clause 12.01-2S (Native Vegetation Management)

The Amendment supports Clause 12.01-2S by allowing for a use that is dependent on a healthy, treed environment with no trees to be removed, and limited native vegetation removal, with any losses offset as required by this policy.

Clause 12.03-1R (Yarra River protection), which seeks to maintain and enhance the natural landscape character of the Yarra River corridor.

Clause 12.05 (Significant Environments and Landscapes)

A key issue in the Hearing was whether or not the Amendment supports this objective, particularly whether the development would diminish from the environmental conservation, recreational or landscape values of the Yarra River.

Council and the Proponent submitted the Amendment supports this clause, by providing for the protection of the landscape and the significant features of the environment, including the treed character of the site. The integration of the proposed use with the existing environmental assets and the construction method of resting lightly in the existing environment will ensure no

permanent effect in the event the use ceases and is removed. The proposal will result in no net loss of flora and measures will be undertaken by the Proponent to improve the host environment including through the removal of noxious weeds.

Clause 15.01-6 (Healthy Neighbourhoods)

The Amendment supports Clause 15.01-6 by providing a venue and activities that supports physical activity and active living.

Clause 17.04-1S (Facilitating Tourism)

The Amendment supports Clause 17.04-1S by establishing a well-designed and sited tourism facility that is close to suitable transport and is compatible with and will build upon the assets and qualities of surrounding urban activities and cultural and natural attractions.

Clause 19.02 (Open Space)

The Amendment supports Clause 19.02 by not restricting public access to the land ensuring the public open space continues to meet the needs of the community.

Municipal Strategic Statement and Local Planning Policy Framework

The Amendment is consistent with **Clause 21.04-4 (Community Facilities)** by:

- providing recreational, cultural and leisure facilities and activities, that meets the community's needs and expectations, without causing detriment to the natural environment
- encouraging a linked system of high-quality, accessible public open spaces to maximise leisure and recreational opportunities
- encouraging environmentally sensitive tourism which delivers economic benefits to the community and maximises the natural advantages of the Yarra Valley and Banyule's heritage
- encouraging a range of tourism infrastructure and facilities to encourage tourism activity and optimise access to tourist facilities.

The Amendment is consistent with **Clause 21.05 (Natural Environment)** by:

- ensuring the facility will rest lightly on the land with minimal environmental impact and utilising existing trees
- improving the health of the local native vegetation including the riverbank environment by the pruning and maintenance of trees and undergrowth and removal of weeds currently infesting the site.

The Amendment is consistent with **Clause 22.01 (Outdoor Advertising Policy)** by ensuring site signage does not detract from the physical character and visual appearance of the locality and are appropriate in terms of location, appearance and size.

The Amendment is consistent with **Clause 22.03 (Safer Design Policy)** by supporting social health and wellbeing and promoting a safer environment through encouraging utilisation and providing passive surveillance, access control and allowing the reuse of facilities (car parks and toilet block) that were closed due to anti-social behaviour.

2.2 Planning scheme provisions

(i) Zones

The subject land is in the PCRZ. The purpose of the PCRZ include:

- To protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values.
- To provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes.
- To provide for appropriate resource based uses.

While no permit is being sought, the Incorporated Document operates as a permit. Before deciding on an application for a permit to use or subdivide land, construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The Municipal Planning Strategy and the Planning Policy Framework.
- The comments of any public land manager or other relevant land manager having responsibility for the care or management of the land or adjacent land.
- Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.

The PCRZ Table of uses identifies uses:

- Section 1 – Permit not required. Includes a condition for other non-specified uses:
Must be a use conducted by or on behalf of a public land manager, Parks Victoria or the Great Ocean Road Coast and Parks Authority, under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975, the Forests Act 1958, the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 or the Crown Land (Reserves) Act 1978.
- Section 2 - Permit required (limited to Emergency services and Renewable energy or Wind energy facility)
- Section 3 – Prohibited, applying where the Section 1 condition is not met and for ‘Any other use not in Section 2’.

The PCRZ also sets out permit requirements for buildings and work, application requirements (including public land manager consent), referral, decision guidelines, provisions for incorporated plans identified in a schedule and signs (Category 4).

(ii) Overlays

The subject land is located within a:

- Heritage Overlay (HO134) extending across the whole of Yarra Flats Park
- Environmental Significance Overlay
 - Schedule 1 ‘Yarra River, Plenty River and Darebin Creek’ (ESO1)
 - Schedule 4 ‘Significant trees and areas of vegetation’ (ESO4)
- Land Subject to Inundation Overlay (LSIO)
- Significant Landscape Overlay – Schedule 1 ‘Yarra (Birrarung) River Environs’ (SLO1).

The purposes of the ESO are:

- To identify areas where the development of land may be affected by environmental constraints.

- To ensure that development is compatible with identified environmental values.

The environmental objectives to be achieved in ESO1 include:

- To protect areas along watercourses from development and loss of vegetation that may damage the streamside environment as a visual, conservation, ecological and recreation resource.
- To enhance and encourage the conservation and maintenance of the streamside environment as a conservation, ecological and recreation resource.
- To address the threatening processes associated with widespread habitat loss and degradation that has occurred in North East Melbourne.
- To conserve water quality and watercourse capacity to enable appropriate beneficial land use and water-based activities to be undertaken.
- To encourage the retention and enhancement of a continuous corridor of indigenous vegetation along river and creek banks in order to provide corridors and habitat for the movement of wildlife.
- To protect the watercourse and adjoining parkland and its flora and fauna from the effects of polluted waters conveyed by the stormwater system or other means.
- To protect and enhance sites with archaeological or scientific significance.
- To encourage development consistent with any approved concept plan for the area.
- To ensure that development and management of land is compatible with the natural environmental character and landscaped qualities of the watercourse and its surrounds.

The environmental objective to be achieved in ESO4 is:

- To protect and enhance trees and areas of vegetation that are significant.

The purposes of the LSIO are:

- To identify land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority.
- To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.
- To reflect any declaration under Division 4 of Part 10 of the Water Act, 1989 where a declaration has been made.
- To protect water quality in accordance with the provisions of relevant State Environment Protection Policy.
- Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).
- To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.

The purposes of the SLO are:

- To identify significant landscapes.
- To conserve and enhance the character of significant landscapes.

The landscape character objectives to be achieved in SLO1 include:

- To retain vegetation that contributes to landscape character, heritage values or neighbourhood character.
- To maintain and protect linear public open space and provide for secluded areas of public open space with access to the river where appropriate.
- To encourage the co-location or clustering of buildings, jetties and mooring facilities on public land.

- To encourage bicycle and shared paths that are safe, well located and require minimal earthworks and vegetation removal.
- To ensure fencing within close proximity to the Yarra River is low in scale, visually permeable and does not contrast with the natural landscape character.

A permit is required under the ESO1, ESO4, and SLO1 for certain buildings and works and to remove, destroy or lop vegetation. A permit for buildings and works is required under the LSIO, and applications must be referred to the relevant floodplain manager (Melbourne Water in this instance).

The Amendment proposes to apply the SCO to the subject land, the purpose of which is:

- To apply specific controls designed to achieve a particular land use and development outcome in extraordinary circumstances.

The SCO enables a schedule to the overlay to:

- Allow the land to be used or developed in a manner that would otherwise be prohibited or restricted.
- Prohibit or restrict the use or development of the land beyond the controls that may otherwise apply.
- Exclude any other control in this scheme.

The SCO currently applies to eight sites in the municipality identified in the Schedule to Clause 45.12.

(iii) Particular provisions

The following particular provisions are relevant to the proposal:

- **Clause 52.05 Advertising Signs** – which includes provision for the display of advertising signs including directional signs and business identification signs. The subject land is within a Category 4 ‘Sensitive Areas’ location which limits the types of permissible signs and in some instances their maximum dimensions or number. Directional signs are unlimited in size or number and do not require a permit. Business identification signs are limited to a total area of up to 3 square metres and require a planning permit.
- **Clause 52.06 Car Parking** - which identifies car parking rates required to be accommodated associated with particular uses.
- **Clause 52.17 Native Vegetation** – which aims to minimise impacts on biodiversity from the removal of native vegetation and to manage native vegetation to minimise land and water degradation. A permit is required to remove, destroy or lop native vegetation on sites greater than 0.4 hectares (with some exemptions). Applications must be referred to DELWP where clearing is greater than 0.5 hectares.

2.3 Bushfire

The subject land is within a Bushfire Prone Area. Clause 13.02-1S must be applied to all planning decisions relating to land within a Bushfire Prone Area or that will be used or developed in a way which will create a bushfire hazard. Consideration of defendable space has been included in the siting of the administration office and the facility will be closed on Extreme and Code Red fire danger days. Native vegetation clearing for defendable space and building construction standards for bushfire (AS3959) is not required as the buildings will not be used for residential purposes and the facility will close on high risk days.

2.4 Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved.

Council identified that the proposal supports the outcomes 'Melbourne is a city of inclusive, vibrant and healthy neighbourhoods' and 'Melbourne is a sustainable and resilient city' by providing a nature based tourism use that is consistent with protecting the environment and providing for sustainable land management. In particular it submitted that the Amendment was consistent with:

- Policy 4.2.3 - Plan and facilitate private-sector tourism investment opportunities
- Policy 5.4.1 - Develop a network of accessible, high-quality, local open spaces including providing access that meets the needs of all members of the community
- Policy 6.4.2 - Strengthen the integrated metropolitan open space network
- Policy 6.5.1 - Create a network of green spaces that support biodiversity conservation and opportunities to connect with nature.

2.5 Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017

The YRP Act provides a new framework for the management of the Yarra River environs comprising the YRP Act, the YSP and preparation of land use framework plans. Its purposes include:

- provide for declaration of the Yarra River and public lands for protection
- provide for the development and implementation of the YSP as an overarching policy and planning framework
- establish the Birrarung Council to advise the Minister on Yarra River land and implementation of the YSP
- set out principles for which 'responsible public entities' must have regard when exercising powers in relation to Yarra River land
- provide the declaration of land as a 'state significant urban natural entity' for the Greater Yarra Urban Parklands
- other matters.

The YRP Act prescribes how a long-term Community Vision and the YSP are to be developed. It also prescribes the establishment of a new statutory body, the Birrarung Council, to be the first independent voice of the Yarra River, as part of recognising it as a living entity.

The YRP Act sets out 19 protection principles under six themes:

- General principles – Decision-making related to Yarra River land integrates environmental, social and cultural factors, including climate change. Care for the environment is a shared societal responsibility.
- Environmental principles – Protecting biodiversity and ecological integrity is paramount and decisions should result in a net gain for the environment on Yarra River land.
- Social principles – Ensuring the community is involved in decision-making to protect the landscape amenity of Yarra River land.

- Recreational principles – Ensure appropriate community use, enjoyment and access to Yarra River land.
- Cultural principles – Ensure Traditional Owners are involved in decision-making and their cultural values, heritage and knowledge is acknowledged, reflected, protected and promoted. Ensure Aboriginal and postcolonial heritage is protected on Yarra River land.
- Management principles – Decision-making related to Yarra River land should result from coordinated between all levels of government and government agencies and aim for the best outcomes beyond compliance.

Council identified the following principles as relevant:

- section 8(1) - Proposed development and decision-making should be based on the effective integration of environmental, social and cultural considerations in order to improve public health and wellbeing and environmental benefit
- section 9(2) - Environmental practices and procedures should ensure that biodiversity and ecological integrity is maintained or enhanced in ways that are proportionate to the significance of the environmental risks and consequences being addressed
- section 11(1) - Community access to, and use and enjoyment of, Yarra River land should be protected and enhanced through the design and management of public open space for compatible multiple uses that optimise community benefit
- section 11(2) - Public open space should be used for recreational and community purposes that are within the capacity of that space, in order to sustain natural processes and not diminish the potential of that open space to meet the long-term aspirations of the community.

Section 4AA(1) of the PE Act currently provides that the Department Head, in relation to Yarra River land:

- (a) must not act inconsistently with any part of a Yarra Strategic Plan that is expressed to be binding on the Department Head when performing a function or duty or exercising a power under this Act in relation to Yarra River land
- (b) must have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan not expressed to be binding on the Department Head, when performing a function or duty or exercising a power under this Act in relation to the Yarra Strategic Plan area that may affect Yarra River land.

The YRP Act sets out arrangements for the establishment of the YSP. Once finalised, section 63 of the YRP Act provides for an amendment to the PE Act inserting Part 3AAA Yarra River Protection which includes the following provision:

46AAA Responsible public entities to comply with Yarra Strategic Plan

A responsible public entity which is a planning authority must not prepare an amendment to a planning scheme that relates to Yarra River land that is inconsistent with anything in a Yarra Strategic Plan expressed to be binding on the responsible public entity.

2.6 Yarra Strategic Plan

The draft YSP has been prepared by the Yarra Collaboration Committee led by Melbourne Water and which comprises representatives from the Wurundjeri Woi wurrung CHAC and all 15 state and local government agencies involved in managing the Yarra River. The draft YSP was released for public comment on 23 January 2020 and comprises two parts, 'Part 1 – Working together to achieve the community vision' and 'Part 2 – Land Use Framework'. It provides a 10 year

overarching policy and planning framework for the Yarra River corridor and sets out the following performance objectives:

- A healthy river and lands
Improving the water quality of the Yarra River and protecting its land, floodplains and billabongs to achieve greater biodiversity.
- A culturally diverse river corridor
Acknowledging, protecting and commemorating the rich heritage of the Birrarung and its stories.
- Quality parklands for a growing population
Improving the river's parklands to support community wellbeing and strengthen the relationship between the Yarra River, its community and visitors.
- Protecting the natural beauty of the Yarra River corridor
Respecting the significance of the Yarra River's landscapes. Where we build, we will protect and celebrate the river's natural beauty, landscapes and views.

The Land Use Framework seeks to ensure that the Yarra is at the centre of future land use and development decisions. As a regional framework, it provides a spatial structure to ensure that activities throughout the corridor align with the performance objectives, the 50 year Community Vision and Birrarung Water Policy.

The Land Use Framework identifies four distinct reaches along the Yarra River corridor. Yarra Flats falls within the 'Suburban reach' (between Warrandyte and Dights Falls) and is identified as 'Yarra River land' which includes all public and state government owned land within 500 metres of a bank of the river. The community priorities and values for the suburban reach include:

- Expand the river's local parklands and trails to improve continuous access, increase biodiversity and enhance river health.
- Celebrate our spiritual connection to the river and its surrounds.
- Establish new habitat for endangered birds, fish and wildlife.
- Employ collaborative planning processes for development to ensure changes are for the benefit of the river and the advantage of all in the community, not just the few.
- Collaborate to provide innovative immersive experiences with nature by expanding natural river tracks and creating environmental playgrounds along the corridor.
- Explore opportunities for community education and connection to Wurundjeri knowledge and cultural practice and significant sites.

Directions for future land use and development of Yarra River Land include:

- Ensure the existing landscape corridor along the Yarra River is protected and reinforced as a vital habitat link and place of refuge.
- Design visitor facilities and boat launch sites to be sensitively incorporated into their natural surrounds.
- Apply Yarra Protection Principles, set out in the *Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017*, to all development on Yarra River land.
- Ensure a coordinated approach to landscaping, wayfinding and the provision of visitor facilities to encourage people to view the Yarra River as one living entity.
- Maintain diverse park landscapes to connect people to the variety of past uses and enable a wide range of visitor experiences.

Submissions on the draft Plan (Part 2: Land Use Framework) were considered by a Panel in May-June 2020 with its 24 July 2020 report now released.

Once the YSP is finalised, Clause 12.03-1R 'Yarra River Protection' will be updated and referenced or incorporated in planning schemes to provide regional planning policy and strategic direction for all land within its area. This will require permits and amendments to consider the YSP and be consistent with its strategic objectives.

2.7 Yarra River Bulleen Precinct Land Use Framework Plan

The *Consultation Draft Yarra River – Bulleen Precinct Land Use Framework Plan*, DELWP 2020 (Bulleen LUFP) applies to Yarra Flats park and the subject land. The Bulleen LUFP arises from Action 21 of the *Yarra River Action Plan, Wilip-gin Birrarung murrn*, DELWP 2017, which committed to its preparation and it is potentially one of the framework plans envisaged by the draft Yarra River Strategic Plan integrated with the YSP.

The Bulleen LUFP includes a vision and set of principles:

- Healthy environment - land and water
 - Build on the legacy of high-quality parklands in the precinct
 - Reclaim and rehabilitate riparian corridors
 - Protect and restore habitats and biodiversity, reconnecting the floodplain and billabongs.
- Culture, the arts, and storytelling
 - Keep culture alive, strengthening existing cultural places
 - Develop new cultural hubs, drawing together key threads of culture
 - Tell the stories of people who have lived and worked here over many generations.
- Connected people and places
 - Rebuild connections within and between landscapes, land, water, stories, people and communities
 - Reaffirm the Yarra River (Birrarung) as the heart of the precinct
 - Create a walking and cycling network that links to the river, key destinations and the rest of Melbourne
 - Use urban form to restore visual and physical links to the Yarra River and parklands.
- Delivering public value
 - Ensure future development and change leaves a lasting positive legacy
 - Introduce a compatible mix of uses to improve the quality and amenity of parklands and open space
 - Improve the environmental, social and cultural values of the study area for future generations.

The Framework Plan represents the vision and principles spatially and under four objectives:

- Ecological and parkland connections
- Access for the future
- An internationally significant cultural place
- A complementary mix of uses.

In the context of Yarra Flats the Framework Plan supports:

- strengthening the natural interface between the Yarra River and Banksia Street
- improving pedestrian and cycling connections including linking key destinations to each other and the Main Yarra Trail
- protecting and enhancing Aboriginal cultural heritage places and minimise impacts to heritage sites and to the cultural values identified in the Bulleen-Banyule Flats Cultural

Values Study with existing Aboriginal places self-determined by the Wurundjeri Woiwurrung CHAC

- ensure that future land use supports public pedestrian access along the Yarra River.

The Bulleen LUFP was exhibited over May and June 2019 with submissions considered by an advisory committee appointed by the Minister. The Advisory Committee's report has not been released.

2.8 Yarra Valley Parklands Management Plan, November 2008

The Yarra Valley Parklands Management Plan prepared by Parks Victoria provides a strategic framework for the management of the Yarra Valley Parklands. Within the plan, the parklands have been divided into seven management zones. These management zones seek to reinforce the identity of particular areas and provides a framework for management and decision making by Parks Victoria and other public agencies.

The subject land is within a zone designated for 'Recreation', the areas around the Annulus and Bolin Billabongs (to the south and south east of the subject land) are designated 'Conservation' and intermediate areas 'Conservation & Recreation'. The Plan identifies Recreation Zones as *"catering for a wide range of recreation opportunities catering for large numbers of visitors in a pleasant semi-natural or developed setting"* with actions including:

- develop priorities for the parklands related to providing, sustainable facilities and services; a range of existing and evolving visitor opportunities; and maintaining the diversity of recreational experiences
- ensuring new facilities or services are consistent with the purpose of the land reservation, complement the role of the parklands, provide a public benefit and facilitate visitor enjoyment of the parklands environment
- investigate the feasibility of allowing adventure and intensive recreation activities in appropriate management zones in the parklands, to avoid adverse impacts on areas of significant environmental and cultural values
- in Recreation Management Zones:
 - Consider proposals for commercial and community partnerships to enhance visitor experiences that are compatible with the recreation zone role and the relevant planning scheme
 - Investigate innovative ways to improve the visitor experience at Yarra Flats by improving visibility and appropriate recreational activities to reflect the changed population dynamics of the adjacent activity centre at Heidelberg.

The Yarra Valley Parklands Management Plan is a reference document at Clause 21.05 and 21.09.

2.9 Middle Yarra River Concept Plan

The *Middle Yarra River Concept Plan – Burke Road to Watsons Creek*, Melbourne Parks & Waterways, 1993 is a background document at Clause 21.03, 22.06 and for SLO1, and provides guidance on how this part of the Yarra River open space corridor will be managed and developed. For the Yarra Flats area, it establishes policies to:

- ensure facilities do not damage streamside vegetation, riverbanks or areas of flora significance
- provide a range of outdoor settings for recreation ranging from quiet, natural areas to intensively developed recreation areas

- promote opportunities for tourism consistent with park management objectives
- investigate opportunities for providing adventure play facilities for all ages particularly older children and teenagers.

2.10 Middle Yarra River Corridor Study

The Middle River Corridor Study – Recommendations Report, DELWP 2016 is a policy document at Clause 12.03-1R that seeks to achieve consistent development outcomes along the Middle Yarra River to ensure that further development does not encroach on the River’s landscape, environmental, aesthetic, cultural and recreational values. In relation to Yarra Flats, it identified strategies including:

- Support the role of the many formalised open spaces as highly valued places for active and passive recreation.
- Design buildings and structures that are visible from the river and the Main Yarra Trail as distinctive features of these spaces that respond to the sensitivity of the riverside landscape and environment.
- Retain conservation areas as undeveloped, naturalistic open spaces to maintain the variety of experiences and the integrity of the riverside landscape and environment.

2.11 Other strategies

Council and the Proponent identified the following strategies relevant to the context of the proposal. They are not referenced in the Banyule Planning Scheme and are of less weight than those referred to in the Banyule Planning Scheme and the legislative framework.

(i) Yarra Flats Revised Concept Plan 2013

Prepared by Parks Victoria in partnership with Council and Melbourne Water, the 2013 Concept Plan identifies four concepts for the park informed by the Healthy Parks Healthy People strategy and community engagement (refer Figure 4):

- general park improvements including weed control and revegetation, creation of three experiential walks and rationalisation of existing bike tracks
- an ‘Impressionist Lab’ (designated in Figure 4 by ‘A’), an interpretive and outdoor studio and gathering areas area focused on the Heidelberg School of Artists
- stormwater treatment wetlands (designated in Figure 4 by ‘B’)
- a tree based eco adventure course (designated in Figure 4 by ‘C’). The Concept Plan flags that the course would be operated by Ecoline who would next commence its detailed planning followed by an appropriate planning process.

(ii) Nature Based Tourism Strategy 2008-2012

Although no longer in operation the *Nature Based Tourism Strategy 2008-2012*, jointly funded by Tourism Victoria, Parks Victoria and the then Department of Sustainability and Environment, sought to stimulate nature based tourism through a coordinated approach to policy, planning, sustainable development and marketing.

The Strategy’s vision was “*Victoria will be recognised as the leading sustainable nature-based tourism destination in Australia renowned for its diverse and accessible natural attractions*”. The Strategy sets out five directions including creating supportive frameworks and partnerships

(including creating models for private investment into public land infrastructure). It informed Parks Victoria's Expression of Interest.

Figure 4 Yarra Flats Park, Revised Concept Plan 2013



(iii) Healthy Parks Healthy People Framework 2020

The *Healthy Parks Healthy People Framework*, Parks Victoria 2020 identifies that the fundamental connections between human health and environmental health, is an underlying philosophy of

Parks Victoria. It includes five key 'strategic priorities' to 'activate' parks for their health and wellbeing benefits including:

- healthy places and setting which include:
 - Sustainable natural settings and all abilities facilities that encourage and support nature play, outdoor learning, physical exercise, physical activity and recreation and social connection
 - Trails and other tailored infrastructure that promote fitness and challenge
 - Inspiring, reflective settings to promote positive mental health and spiritual connection.
 - Nature play, outdoor learning and adventure. Innovative settings and program partnerships (e.g. Bush Kinder and Nature Play Groups, Outdoor education, Nature-based playscapes, and building youth resilience through adventure).
- program partnerships which include:
 - Collaborations that promote nature play, outdoor learning, physical activity and social connection.
 - Events and programs that promote regular participation in physical activity, resilience and positive mental health in nature.

(iv) Open Space for Everyone

The *Open Space for Everyone, Open Space Strategy for Metropolitan Melbourne*, Victorian State Government 2021 was prepared as a Plan Melbourne Action and emphasises the importance of open space to promoting active living and managing mental health and wellbeing and prioritises:

... making access easier to parks, open spaces and public spaces that support active living; increasing active transport; and increasing participation in sport and active recreation activities to help achieve these priorities.

It further seeks to:

- find new ways to plan and manage open space for multiple outcomes, including community benefits. High-quality open space can create delight, support multiple activities and encourage social connectedness
- encourage programs that activate underutilised sites and connect new types of users with open space.

(v) Protecting Victoria's Environment – Biodiversity 2037

Protecting Victoria's Environment – Biodiversity 2037, DELWP 2017 recognises the opportunity for biodiversity to benefit and enhance economic development and identifies the broader value of biodiversity to individuals, communities, Aboriginal Australians and society as whole. It recognises Victoria's natural environment as its primary tourist attraction.

Priority 8 relates to nature based tourism and identifies the importance of a proper balance between economic development, including tourism, and the natural environment recognising that tourism and recreation and the natural environment are not mutually exclusive and requires balanced and sensitive outcomes.

(vi) The Yarra River Action Plan, Wilip-gin Birrarung murrn

The *Yarra River Action Plan, Wilip-gin Birrarung murrn* provides 30 actions to ensure the river's long-term protection guided by five objectives. It is discussed in more detail in Chapter 4.

(vii) Bulleen-Banyule Flats Cultural Values Study Summary

The *Bulleen-Banyule Flats Cultural Values Study Overview Document* sets out the results of the *Bulleen-Banyule Flats Cultural Values Study* (CVS) undertaken by the Wurundjeri Woi wurrung CHAC in 2020 with funding from DELWP. The CVS documents the cultural values and significance of the Bulleen-Banyule Flats reach of the Birrarung (Yarra River) to the Wurundjeri Woi wurrung people. It is discussed in more detail in Chapter 4.

2.12 Ministerial Directions

The Explanatory Report and Council's Part A submission discusses how the Amendment meets the relevant requirements of:

- *Ministerial Direction 9 Metropolitan Strategy* (October 2002 as amended) as set out at Chapter 2.5
- *Ministerial Direction – The Form and Content of Planning Schemes* pursuant to Section 7(5) of The Act (April 2017 as amended)
- *Ministerial Direction No. 11 – Strategic Assessment of Amendments* (October 2013 as amended) and
- *Ministerial Direction 15 – The Planning Scheme Amendment Process* (October 2013).

The Panel has reviewed how the Amendment responds to the relevant Ministerial Directions. It considers that Council has appropriately considered the relevant directions and that the Amendment has been prepared consistent with them.

3 Strategic justification

3.1 The issues

The issues are:

- whether the Amendment and proposed use is consistent with the PE Act, planning policies and provisions of the Banyule Planning Scheme
- whether the Amendment is consistent with the principles of the YRP Act
- whether the Amendment and use of the land is consistent the purpose and provisions of the PCRZ
- whether the use of the Special Controls Overlay is appropriate
- whether the Amendment is strategically justified.

3.2 Background

In addition to the legislation, policies and strategies set out in Chapter 2 the following are relevant:

Crown Land (Reserves) Act 1978

The subject land is reserved under the Crown Land (Reserves) Act for the purposes of Public Park and Recreation (Crown Allotment 2H) which covers most of the Treetops Activity Area and Conservation, Recreation, Leisure and Tourism for the balance including most of the Yarra Flats park (Crown Allotment 2H).

Parks Victoria Act 2018

The Parks Victoria Act identifies the following ‘objects’ of Parks Victoria:

- provide for and encourage the community's enjoyment of and involvement in Parks Victoria managed land
- contribute to the wellbeing of the community through the effective protection and management of Parks Victoria managed land.

Section 8 of the Act provides for the ‘functions’ of Parks Victoria which include:

... to control and manage Parks Victoria managed land, in a manner that protects, conserves and enhances the land and in a manner which provides for the land to be appropriately used, enjoyed and appreciated, including doing all or any of the following:

- providing opportunities for the community to enjoy and appreciate Parks Victoria managed land and providing facilities, information and services to support that enjoyment and appreciation.

Clause 12.03-1R (Yarra River protection)

The objective of Clause 12.03-1R is *“To maintain and enhance the natural landscape character of the Yarra River corridor”*.

Strategies include:

- strengthening the Yarra River’s natural environment, heritage and overall health by:
 - protecting, conserving and enhancing areas of cultural and archaeological significance
 - protecting the river’s riparian vegetation, natural riverbank topography and flood management capacity

- ensuring development does not increase the rate or quantity of stormwater entering the river
- protecting and enhancing both terrestrial and aquatic habitats and linkages along the river corridor
- promoting a sense of place and landscape identity by:
 - retaining a dominant and consistent tree canopy along the river corridor and in its broader landscape setting
 - ensuring the appearance of development is subordinate to the landscape setting, with views of development filtered through vegetation
- retaining and enhancing people's enjoyment of the river and its environment by:
 - planning for the river and its environs as a recreation and tourism resource
 - ensuring linkages and public access to the river and its parklands are maintained and enhanced
 - avoid overshadowing to ensure the amenity of the public realm is maintained year-round
- ensuring that development is designed and sited to maintain and enhance the river's secluded and natural environment by:
 - minimising the visual intrusion of development from different viewpoints
 - ensuring that the siting and design of buildings avoids conflicting with the local natural landscape and environmental character.

3.3 Use of public land

(i) Submissions

Many submissions identified that the proposed use was an inappropriate use of public land and would result in alienation of areas of the Yarra Flats park from community access and use.¹⁴ The submissions of Yarra Precinct Protection Association (YPPA) (submitter 45), Yarra Riverkeeper Association and RCSH considered that the proposal would impact on the ability for a diversity of users to enjoy the park.

Ms Curry considered that the proposal was contrary to Parks Victoria's obligations under the Parks Victoria Act to protect and preserve public land. The Friends of Banyule (submitter 202) maintained a similar view. The Yarra Riverkeeper Association considered that outside of limited accommodation and food provision, Victorians wanted their parks to be for people not business.

Other submissions considered that the proposal offered no educative values, provided for a narrow demographic of users and offered no community benefit. For a large number of submitters, it was preferable that the parkland be maintained in its natural and passive open space state.¹⁵

Ms Roberts (submitter 211) submitted that it was hard to conceive how the operation would assist in learning about the environment when participants were suspended on a rope or ladder or otherwise concentrating or watching other participants. She considered that this was not the type of facility anticipated by strategies supporting nature tourism and protecting natural values.

¹⁴ For example, submissions 14, 18, 40, 56, 68, 85, 107, 119, 156, 157, 168, 175 and 182.

¹⁵ For example, submissions 9, 13, 24, 25, 30, 42, 44, 47, 51, 52, 53, 59, 74, 78, 79, 93, 111, 115, 142, 144, 146, 154, 159, 161, 165, 173, 178, 188, 206 and 208

YPPA made a similar submission considering that a ‘one-off’ experience was not the type of sustained outdoor experience required for longer term understanding and appreciation of the environment. The submission sought the retention of the park as a natural space for public enjoyment as part of an undeveloped green asset.

A number of submitters were critical of the level of community engagement associated with the 2013 Concept Plan including the YPPA, RCSH and Dr Cary. These submissions considered that the Concept Plan was not representative of the wider community view and had been superseded by other legislative and policy setting changes including those associated with the YRP Act. Submissions such as that of the Yarra Riverkeeper Association were similarly critical of the Expression of Interest process that identified the site, noting the site selection process lacked any environmental analysis. Submissions further noted the thinking regarding Traditional Owner roles in water management and how the community should interact with the river had changed radically over time.

Conversely, Parks Victoria submitted that the Amendment and use it facilitated was consistent with:

- the Parks Victoria Act objectives and Statement of Obligations including “*providing high quality opportunities for visitors to the enjoy the parks and reserves, and contributing to the state’s visitor economy*”
- the purpose of the land reservation
- its Strategic Plan goal of “Connecting People and Nature”
- the Healthy Parks Healthy People Framework
- the Yarra River Parklands Management Plan and 2013 Concept Plan.

Several submissions supported the Amendment.¹⁶ The reasons for support included, among other things, that the proposal would provide for healthy outdoor activity, support greater engagement and utilisation of this part of the park, provide more opportunities for children and families, discourage anti-social activity, and provide a positive relationship with nature and educative opportunities. Blue Light Victoria (which operates in partnership with Victoria Police to deliver programs to engage and empower youth through new experiences) supported the proposal and its potential to assist in building youth resilience and confidence. Submissions 135 and 128 agreed considering that the proposal would likely be used by schools, Scouts Victoria and Victoria Police.

The Proponent submitted that Yarra Flats is reserved for both recreation and conservation purposes under the Crown Land (Reserves) Act and has been designated as a Recreational Management Zone by Parks Victoria since 2008. This, it said, provided a degree of flexibility to make “*good use of a site with existing infrastructure, and to support its refurbishment*”. It considered that submissions raised the “*question about whether public land should be managed for multiple purposes and for different sections of the community, or whether it should be managed in silos for mutually exclusive purposes*”.

Both Council and the Proponent observed that absent the ‘by or on behalf of’ condition for the proposed use in the PCRZ, the use and development would not require a planning permit under the zone if undertaken by Parks Victoria.

¹⁶ Including submissions 3, 4, 7, 16, 29, 100, 128, 190 and 195

(ii) Discussion

The Panel considers that the use of the subject land for an outdoor recreation facility is broadly consistent with its reservation status. In terms of its scale and discrete design, it is the type of use that has been envisaged in the Yarra Valley parklands and in this general vicinity for some time in various strategic documents including the Yarra Valley Parklands Management Plan.

From the Panel's perspective the issue of using public land is not whether it can or should be used for an outdoor recreation facility, whether or not run by a private operator. Rather it is whether a use is appropriate in its wider setting including its impacts on the identified social, cultural and environmental values of that land. These potential impacts are discussed in the following chapters of this Report.

The Panel is of the view that the nature of the proposed use does not alienate public land, result in the loss of public land, reduce the wider community's opportunities to access it or enjoy it or limit other activities and uses. Indeed, it is likely to result in achieving the broader objectives of the Healthy Parks Healthy People Framework and Open Space for Everyone Strategy to include activation of parks, encourage all ability activities, encourage exercise, fitness and social connection and meet the needs of a wider range of users. This is similarly consistent with the objectives of the Parks Victoria Act and functions of Parks Victoria and Park Victoria's support for the proposal. The Panel observes that the Amendment does not change the zone, land reservation status or the role and responsibilities of the public land manager for the subject land.

The Panel acknowledges the criticisms of some submitters regarding the level of analysis undertaken to inform the Expression of Interest process or that the 2013 Concept Plan is out of date. While the legislative, policy and strategic context has changed since those documents were prepared, the 2013 Concept Plan provides context to the proposal and as an indicator of the type of opportunities identified in the Yarra Valley Parklands Management Plan. However, in itself the 2013 Concept Plan does not justify the Amendment. The Panel does not rely on it or give it significant weight as it is not recognised in the Planning Policy Framework. The Amendment is more appropriately assessed under the current planning framework.

3.4 Planning framework

(i) Evidence and submissions

Mr Glossop's evidence summarised a range of strategic documents that apply to the Yarra River corridor and public parklands that abut it. He considered these strategies provided background or context to assist land managers or to assist in understanding the values rather than provide land use or development guidance.

Mr Glossop considered that the correct planning framework for the assessment of the proposal was found in Clause 71.02-3 (integrated decision making) and the objective of achieving outcomes which create a net community benefit and sustainable development.

Mr Glossop's evidence considered that the Amendment was acceptable from a planning policy perspective. Policy supports sustainable development on public land for recreational and tourist developments which have minimal impact. He considered the proposal modest in its footprint and provided the environmental and traffic impacts are acceptable would result in a net community benefit.

Mr Gentle submitted that there was no dispute that there is a potential role for limited, sensitive forms of outdoor recreation to occur on the subject land. His submission acknowledged that there is strategic policy support for recreational land uses in the Yarra Valley parklands and a variety of recreational uses already exist. Rather than needing to resolve significant policy conflict, using Mr Glossop's summary, Mr Gentle submitted that it was instead a question of whether this location and this land use is an acceptable one.

The Proponent submitted that the Amendment is supported by planning policy and strategies relating to nature based tourism and the use of land for such activities in the Yarra Valley parklands, citing the Yarra Valley Parklands Management Plan in particular.

The Proponent acknowledged there were competing demands for the Yarra Flats and that planning policy seeks to balance these competing demands in the interests of net community benefit and sustainable development. It does not seek to lock up areas of open space and exclude people from them. It submitted that a balanced outcome is required, consistent with the objectives of PE Act. This includes facilitating activities popular with the younger generation. Referring to Clause 71.02-3, the Proponent submitted that the Amendment *"was facilitating the changing needs of the community and the emergence of innovative nature based activities in a responsible and sustainable manner, which balances the needs of different generations"*.

Council considered that the Amendment actively responded to existing planning policy and is consistent with the decision guidelines that would have been the applicable planning controls absent the SCO. It submitted that the subject land is appropriately located to utilise existing infrastructure, proximate to areas of activity and proximate to public and major active transport networks. It considered that to the *"extent that there is any conflict between policies, at face value at least, there is a significant net community benefit that is likely to result from permitting the application"*.

(ii) Discussion

In terms of strategic justification for the Amendment the Panel considers that the key elements of the planning framework are clauses 12.03-1R and 71.02-3.

The strategies referred to in the Planning Policy Framework all consistently support the provision of a range and diversity of recreation experiences including more intensive adventure-based activities in appropriate locations. These documents reinforce that rather than a carte blanche approach to different activities and development, careful consideration needs to be given to ensure that new activity and development is sensitively designed and minimises the level of impact on the important values.

Clause 12.03-1R provides a basis for considering whether the Amendment achieves the objective to maintain and enhance the natural landscape character of the Yarra River corridor including whether it responds to the identified strategies.

While the SCO effectively turns off other Banyule Planning Scheme provisions including the existing overlays and particular provisions, the Panel has had appropriate regard to them in the following Chapters.

The planning framework does not seek to provide for absolute outcomes such as maintaining the area in its natural state. That is an issue for the public land manager. The planning system does however seek to create sustainable outcomes that balance policy considerations and manage impacts. While the Report discusses Clause 21.03-1R, other issue specific policies and Clause

71.02-3 in the following Chapters, the Panel considers that the proposal is consistent with the Planning Policy Framework and will on balance result in a net community benefit where the potential impacts can be properly managed. This position is also reflective of the fact that the proposal from a use and development perspective has a recreation focus, a small footprint, lightly touches its setting and can be quickly removed with minimal damage and does not exclude the movement of other park users through the site. The proposal can reasonably be identified as a short to medium term, temporary use rather than one which will have longer term impacts.

3.5 Public Conservation and Recreation Zone

(i) Evidence and submissions

A number of submissions considered that the proposed use was inconsistent with the purpose of the PCRZ.

Mr Gentle's submission considered that the primary strategic role of the subject land reflected through the PCRZ is for the protection and conservation of the natural environment. He submitted that, while there is a secondary potential for such land to accommodate limited nature based recreational use, it should not conflict or displace the primary strategic imperative. It was considered that this set a low tolerance of ecological impact – that anything less than minimal impact was unacceptable.

The evidence of Mr Glossop referred to the purpose of the PCRZ set out in the *Practitioner's Guide to Victorian Planning Schemes*, January 2020 which identified that it applies to land where the primary intent was to conserve and protect the natural environment and allow associated educational activities and resource based uses. He considered the proposal to be a recreational use that would attract people to the park, allow them to experience the natural setting in a new and different way, provide a fitness and leisure activity, provide employment and attract visitors.

Parks Victoria's submission stated that the Amendment was consistent with the purposes of the PCRZ including to provide facilities which assist in the education and interpretation of the natural environment.

The Proponent identified a range of other uses which could be contemplated in the PCRZ and in Crown land settings (commercial tourism uses, mountain bike courses, surf lifesaving clubs and skate parks). It submitted that the planning system facilitates these in a range of public park settings in a responsible manner and in the context of relevant strategic objectives. This it said ought to be the case here. In this instance, Parks Victoria is not equipped to deliver the use and is instead adopting a partnership approach.

(ii) Discussion

The Amendment seeks to apply the SCO in a manner that allows a use and development that would otherwise be prohibited or restricted and excludes any other controls in the Banyule Planning Scheme. Notwithstanding this, the Panel is of the view that consideration of the subject land's zoning is appropriate as it establishes the Planning Scheme's underlying role and purpose for the land aligned with the Planning Policy Framework.

The purpose of the PCRZ is threefold:

- to protect and conserve the natural environment for its various values

- to provide facilities which assist in public education and interpretation of the environment with minimal degradation
- to provide resource based uses.

Within this context, a range of uses and development can be considered. The Panel considers that the type of use proposed can be contemplated within the PCRZ. It agrees with Mr Gentle's submissions however, that any use and development must be consistent with and support the Zone purpose. However determining what the tolerance for impact is should be based on the particular circumstances rather than the assumption of no or minimal impact. The Panel discusses these impacts on the particular cultural and environmental values in the following Chapters of its Report although it considers that the Amendment is consistent with the purpose of the PCRZ overall. Again, the Panel notes the support of the public land manager for the Amendment.

3.6 Application of the SCO

(i) Evidence and submissions

Mr Glossop considered that the proposed use was properly defined as an 'Outdoor recreation facility' and on a first principles basis an appropriate type of activity in an area of public parkland of a higher order such as Yarra Flats park and in the PCRZ.

Mr Glossop referred to the *Practitioner's Guide to Victorian Planning Schemes*, January 2020 in relation to the interpretation of the 'by or on behalf of' conditional requirements in the PCRZ and considered it a matter of legal interpretation. He considered that the use of the SCO was an appropriate way to facilitate the proposal and preferable to a s96A process or the use of a Special Use Zone which he said would diminish the importance of the land as public land.

The Yarra Riverkeeper Association and Dr Andrew Cary (submitter 19) considered that the application of the SCO conflicted with the objectives of ESO1 as it would result in disconnectedness of the river corridor.

Ms Curry considered that the application of the SCO would undermine Parks Victoria's public land management role by conferring Parks Victoria responsibilities to Council which had different objectives. She identified potential contradictions with the different enforcement responsibilities of Parks Victoria under the Parks Victoria Act and Council under the SCO's Incorporated Document.

The Proponent characterised the use of the SCO as an implementation mechanism rather than a vehicle that undermined the relevant land management objectives of public land. It is applied to avoid the complexities of the 'by or on behalf of' test.

Council submitted that the PCRZ enables a wide range of uses to be considered without a planning permit where they are conducted by or on behalf of the public land manager, establishing the principle that the use and development of the land for an outdoor recreation facility would be permissible if this condition was met. It took the view that despite the proposal being advanced in response to Parks Victoria's Expression of Interest it may not legally meet the threshold of 'by or on behalf of'. Its submission included references to the *Practitioner's Guide*, relating to the intent for the use and development of public land and the interpretation of 'by or on behalf of'. It submitted the application of the SCO was a precautionary approach, avoided legal dispute and provided a level of certainty for the Proponent and Parks Victoria.

Council submitted that the Panel should consider the appropriateness of the use and development under the provisions of the SCO and the planning policy context rather than on the various permit triggers or Zone and Overlay provisions. It provided an analysis of those triggers in any event and considered the proposal largely compliant.

Council identified that unlike a planning permit which establishes existing use rights and ‘vested rights’, and cannot easily be revoked, the SCO lasts only as long as the planning scheme contains the provision. Consequently, if it were considered that the use was inappropriate it could more easily be revoked by a planning scheme amendment including via a s20(4) process.¹⁷

In any event, Council considered that it was likely that the lease from Parks Victoria would be the primary avenue of pursuit if there was a concern that the use was not operating appropriately, *“conditions were being breached or that circumstances had changed to such an extent that the use is no longer considered appropriate”*. It noted that the structures could be easily disassembled at the expiry of the lease or a change in the planning controls. This, it said, demonstrated that there is little risk in permitting the proposal from either a use or a development perspective *“because the use and development is easily undone if the circumstances were such that it was thought necessary to bring it to an end”*.

(ii) Discussion

The Panel considers that the Amendment is an appropriate way to manage the legal uncertainties associated with the ‘by or on behalf of’ condition which makes the use otherwise prohibited in the PCRZ. It is not, however, in a position to comment on the legal merits of this one way or another.

The Panel agrees with Mr Glossop that applying a Special Use Zone is inappropriate given the scale and nature of the proposal and would diminish the importance of the subject land and wider parklands as public land.

The application of the SCO provides a mechanism to manage the impacts of the use and development and does not diminish the lands’ reservation status or the obligations for its management by Parks Victoria. The Panel notes that the approach of using the SCO approach rather than a s96A approach was DELWP’s preference through its authorisation process. The structure of the Incorporated Document allows it to function similar to a planning permit with conditions. As noted by Council, there are a number of avenues to remove the control if there were concerns about non-compliance, inconsistencies about the operation in the context of Park Victoria’s responsibilities or a legislation and policy change. The nature of the proposal is that the development can quickly be dismantled.

3.7 Yarra River Protection Act and Yarra Strategic Plan

(i) Submissions

The RCSH, YPPA, Yarra Riverkeeper and the Friends of Banyule submitted that the proposal was inconsistent with the YRP Act. While each highlighted different aspects of this inconsistency they included that the proposal was contrary to:

- the environmental principles relating to achieving a net environmental gain
- the social principles associated with amenity

¹⁷ By the Minister under the PE Act.

- the cultural principles
- using open space for recreational and community spaces where there was space and capacity to do so.

The Yarra Riverkeeper Association considered that the Amendment should not proceed until the YSP is finalised.

Parks Victoria's submission stated that the Amendment was consistent with the principles of the YRP Act particularly principles relating to recreation and *"not inconsistent with general and other principles"*. It considered it was also consistent with the draft Yarra River Strategic Plan including the suburban reach community vision to *"collaborate to provide innovative immersive experiences with nature by expanding natural river tracks and creating environmental playgrounds along the corridor"* and the action to *"ensure park infrastructure and services are contemporary, inclusive and provide multiple benefits"*.

The Proponent submitted that the Amendment is consistent with the principles of the YRP Act, in particular the recreational principles, but that the principles needed to be considered in the framework of the Act as a whole. As such they cannot be elevated above the status of the Yarra River Strategic Plan or the Community Vision to which, it submitted, they were subordinate. It identified that the principles should guide the implementation of the Amendment, not form the basis of a reason to reject it.

The Proponent submitted that the YRP Act currently has no application in the PE Act. Section 63 of the YRP Act does not commence until the Yarra River Strategic Plan is approved and therefore has no legal application at this time. When it does commence it will not require decision making under the PE Act to be consistent with the YRP Act principles. Rather it will require a Responsible Public Entity to act consistently with anything expressed to be binding in the YSP. Accordingly, if it was thought that the grant of the lease was not consistent with the approved Strategic Plan then that could be taken into account at the time, with the benefit of any further information arising at that time.

In relation to the draft YSP, the Proponent submitted that the proposal was consistent with the Community Vision for the suburban reach including provision of an environmental playground accommodating a wide range of visitor activities. It said that the premise that the area cannot be managed for both environmental and recreational purposes was at odds with the Plan's identification that the Yarra is a shared asset to be managed for the benefit of all sections of the community. It identified that the Plan did not single out this area for protection or as a 'no go zone' for the North East Link project, unlike the nearby Bolin Bolin Billabong and Banyule Flats.

Council considered that the Amendment was not inconsistent with the principles of the YRP Act and submitted that if it were it wouldn't have been authorised.

(ii) Discussion

The Panel notes the submissions of the Proponent regarding the operational status of the YRP Act and the YSP. The Panel considers that it is appropriate that it have regard to the YRP Act and in particular the identified protection principles as a guide to decision making and assessment rather than as definitive requirements.

The Panel has identified two threshold issues which relate to the protection principles and that need to be resolved prior to adoption of the Amendment. These are:

- the lack of partnership with the Traditional Owners

- the lack of specific offset statement to address Clause 52.17.

These are discussed further in Chapters 4 and 5.2. Chapter 5.6 discusses protection principles in relation to ecological values. Once these are addressed and subject to implementing the Panel's other recommendations on the drafting of the Incorporated Document, the Panel considers the Amendment to be appropriate, having regard to the objectives and requirements of the YRP Act.

The use of parks for more challenging and active activities is no less significant in meeting the broader community needs for open space including the associated social benefits. In this case the relatively small footprint within a large park and which does not prevent others using the space, while providing a new recreation opportunity in an attractive environment and retaining other areas of the park in a more natural state, would result in a net community benefit. The Panel does not consider this to be inconsistent with the social principles of the YRP Act which seek enhance the Yarra River land environment for the benefit of the whole community.

Although the YSP it is not yet operational it has advanced through significant community engagement, Council input and a panel process, and it is a relevant consideration to ensure that the Amendment is not inconsistent with a key document to guide decisions under the YRP Act. In this instance the Panel can only refer to the draft document. From a strategic perspective the draft YSP provides important context and a basis for guidance but does not support a conclusion that the proposal is inappropriate, so long as the impacts are properly managed.

The Panel again observes that if the final YSP contains more definitive directions which change the strategic context for the site and do not support the Amendment, subsequent decision makers (depending on the status of the Amendment) have the options of abandoning the Amendment, removing the SCO or ending the lease or reducing the lease period.

3.8 Draft Bulleen Land Use Framework Plan

(i) Submissions

The Proponent considered that the Amendment was consistent with the directions of the draft Bulleen LUFP.

Council submitted that the Bulleen LUFP was relatively silent on a specific direction or intent in respect of Yarra Flats. It identified that Objective 4 provided the most salient advice in terms of managing different land use expectations, stating that:

Within the study area there is the opportunity for residential, commercial and cultural uses to 'activate' open space and the public realm. Increased pedestrian activity from these land uses can benefit passive surveillance throughout the day and into the evening. There is also an opportunity to leverage private investment in the public realm, through development contributions and other mechanisms. Given the study area's rich parkland setting and ecological and cultural values, it will be important to consider how future buildings can respond to and reflect their environment.

Council observed other relevant principles including delivering public value, introducing a compatible mix of uses to improve the quality and amenity of parklands and open space and supporting more well-designed sporting and recreation opportunities accessible to an increasingly diverse community.

(ii) Discussion

While not yet finalised, the draft Bulleen LUFP is a well advanced document and should be considered in the context of this Amendment. In its draft form the type of use proposed is broadly consistent with the objectives and principles of the plan to consider uses which activate the parklands and provide for a mix of uses and experiences. What is important is ensuring that any use and development appropriately responds and reflects the parkland setting and the identified ecological and cultural values. The Panel considers whether the use and development proposed by the Amendment appropriately responds to these values in later Chapters of this Report.

3.9 Conclusions

The Panel concludes:

- The Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework.
- The Amendment is broadly consistent with the principles of the YRP Act.
- The Amendment and use of the land is consistent the purpose of the PCRZ.
- The use of the Special Controls Overlay is appropriate.
- The Amendment is well founded and strategically justified.
- The Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

4 Cultural heritage

4.1 Aboriginal cultural heritage

(i) The issue

The issue is whether the proposal:

- appropriately responds to cultural heritage values
- has appropriately considered and responded to the relevant Yarra River Protection Principles.

(ii) Background

Aboriginal Heritage Act 2006

The purpose of the *Aboriginal Heritage Act 2006* (AH Act) is to:

- provide for the protection of Aboriginal cultural heritage
- empower Traditional Owners to protect their cultural heritage
- strengthen the ongoing rights to maintain relationships with land and water
- promote respect for Aboriginal cultural heritage as common heritage of all peoples.

The AH Act sets up a process for CHMPs to be undertaken to assess an area for cultural heritage significance and provide management responses in a written report. CHMPs are required in specified circumstances and standards prescribe the procedure to be undertaken in the completion of CHMPs.

Mandatory CHMPs are required by the regulations if, amongst other reasons, a 'high impact activity' is to be undertaken in 'area of cultural heritage sensitivity'. Waterways and land within 200 metres of a waterway are considered an 'area of cultural heritage sensitivity' unless that land has been subject to 'significant ground disturbance'. A 'high impact activity' is defined as one that would require 'significant ground disturbance' and is for one of a list of uses which includes minor and major sporting facilities. Significant ground disturbance is defined as:

Significant ground disturbance means disturbance of

- the top soil or surface rock layer of the ground; or
- a waterway –
by machinery in the course of grading, excavating, digging, dredging, or deep ripping, but does not include ploughing other than deep ripping.

There is provision in the AH Act, mirrored in the Planning Scheme,¹⁸ to ensure any planning permits issued are consistent with recommendations of any approved CHMP and to this end, a CHMP must be approved prior to the issuing of a planning permit.

Part 10 of the AH Act sets out the process for establishing Registered Aboriginal Parties (RAPs) who are, amongst other roles, "to act as a primary source of advice" on matters relating to Aboriginal places or objects from their area. The Wurundjeri Woi wurrung CHAC are the relevant RAP for the Banyule Flats area.

¹⁸ Clause 15.03-2S

An Aboriginal Heritage Due Diligence Report was undertaken by Heritage Insight Pty Ltd in 2018 and exhibited with the Amendment documents. The report concluded the project area had been subject to significant ground disturbance including through land and vegetation clearance, agricultural and pastoral activities, periodic flooding, excavation and landfill activities and therefore a CHMP was not required.

The Panel directed Council to advise of engagement undertaken to date with the Wurundjeri before the preparation of the Amendment.

Planning Scheme

The area is subject to a Heritage Overlay (HO134) which recognises the Yarra Flats area as an Aboriginal heritage place.

Yarra River Action Plan February 2017

The Yarra River Action Plan was a joint action plan by the Minister for Planning, Minister for Water and Minister for Energy, Environment and Climate Change in partnership with the Wurundjeri Council. It required the river to be managed as a living entity with a voice; centred by Traditional Owner values and perspectives; and underpinned by coordinated planning framework. The Plan contained 30 specific actions including:

- the establishment of the YRP Act
- interim Yarra River planning controls
- development of a 50-year Community Vision and
- a YSP to be developed every 10 years to deliver this mission.

The Yarra River 50 Year Community Vision was launched in May 2018 the same day as the Wurundjeri Woi wurrung people's policy response *Nhanbu narrun ba ngargunin twarn* (Ancient Spirit and Lore of the Yarra).

The Yarra River Action Plan includes the following acknowledgment:

We support the need for genuine and lasting partnerships with TOs to understand their culture and connections to Country in the way we plan for and manage the Yarra River corridor and its environment.

The Wurundjeri Council forward noted the high significance of the invitation to participate in the Yarra River Protection Ministerial Advisory Committee and indicated a hope that:

... this moment marks a genuine paradigm shift... unusually, we were sitting upstream, at the table where decisions are made, not learning about processes that had occurred, and decisions made, 12 months or more previously. We hope that this Ministerial Advisory Committee marks the beginning of something quite different to decision making on Country, co-designing decisions, policies, and managing our sovereign assets (land, water and sky) as Traditional Owners in partnership with state.

Yarra River Protection Act (Wilip-gin Birrarung murrn) 2017

The YRP Act recognises the Wurundjeri Woi wurrung as the Traditional Owners and custodians of the Birrarung. The YRP Act relevantly:

- provides for the declaration of Yarra River lands for the "*purpose of protecting it as one living and integrated natural entity*"
- establishes the Birrarung Council whose role is to advise the Minister on the development and implementation of the YSP and to advocate for the protection and preservation of the river.

The Wurundjeri Woi wurrung are to have at least two representatives on the Birrarung Council.

The relevant cultural principles under the YRP Act are as follows:

- (1) Aboriginal cultural values, heritage and knowledge of the Yarra River land should be acknowledged, reflected, protected and promoted.
- (2) The role of the traditional owners as custodians of Yarra River land should be acknowledged through partnership, representation and involvement in policy planning and decision-making.
- (3) The cultural diversity and heritage of post-European settlement communities should be recognised and protected as a valued contribution to the identity, amenity and use of Yarra River land.

Once the YSP is approved, a responsible public entity must not prepare a planning scheme amendment inconsistent with any aspect expressed in the YSP to be binding on the responsible public entity. Similarly, the Head of DELWP must not act inconsistently with any part of the YSP that is expressed to be binding, and must have regard to the remainder of the plan in exercising their duties.

In the interim, s4AA of the PE Act obliges the Head of DELWP to ensure they have regard to the Yarra protection principles.

Draft Yarra Strategy Plan

Draft YSP includes Performance objectives and strategies including relevantly:

- Objective 1: A healthy river and lands
 - Restore billabongs and wetlands
- Objective 2: A culturally diverse river corridor
 - Highlights the need to capture and document cultural heritage values or risk losing or mismanaging them
 - Strategy to support Traditional Owners to record cultural values
 - Pilot interpretive and educational programs for five sites including Bolin Bolin Billabong
- Objective 3: quality parklands for a growing population
 - Establish partnerships to manage sites with the Wurundjeri Woi wurrung CHAC and Traditional Owners
 - Extend parkland network to cater for a growing community.

The Plan also identifies Wurundjeri Woi wurrung sites of significance (including Yarra Flats) and areas for protection (including Bolin Bolin Billabong).¹⁹

Bulleen-Banyule Flats Cultural Values Study Summary Report

In 2018 DELWP provided funding to the Wurundjeri Woi wurrung CHAC to complete a pilot cultural values study encompassing the integrated billabong and river system at Heidelberg and Bulleen. The resultant CVS found the area to be significant for the following reasons:

- its significance for its role in the social life of ancestors
- historical narrative following colonisation being the tract of land the Traditional Owners requested to retain by agreement from settlers (refused)
- spiritual connection due to it being an important creation site

¹⁹ Page 68 of Part 2 of the Draft Yarra Strategic Plan

- key site used for eel trapping.

As a pilot project the CVS included an independent evaluation process which found the methodology to be “*rigorous and replicable*”. It further found:

... there remains a need for DELWP to determine how information from this CVS, and future projects, can and will be used by DELWP. This included implementing the outcomes.

The CVS was part of a bigger commitment by the Victorian Government under the Yarra River Action Plan to work with Traditional Owners to map heritage values along the Yarra River.

It includes recommendations and possible actions including:

- rehabilitate the ecological values within the billabongs and wetlands to a level of a typical healthy floodplain billabong
 - prioritise habitat restoration for culturally and ecologically significant plants and animal, including species identified through the Cultural Values Study as totemic beings
 - engage the Wurundjeri Woi Wurrung Narrap Unit for activities on Country, including revegetation, weed control, environmental monitoring and cultural burns
- recognise the Bulleen-Banyule Flats as an Aboriginal cultural landscape for protection and enhancement
 - register the cultural landscape on the Victorian Aboriginal Heritage Register as an Aboriginal Cultural Place
- create opportunities for Wurundjeri Woi wurrung people to share the cultural values associated with the Bulleen-Banyule Flats
 - install interpretive signage and name places in Wurundjeri Woi wurrung language to educate the broader public about the Bulleen-Banyule Flats being a cultural landscape
- ensure statutory and strategic planning and heritage management processes serve to protect and enhance Wurundjeri Woi wurrung values
 - ensure that land management and planning projects, including the Yarra River - Bulleen Precinct Land Use Framework Plan, avoid impacts to identified cultural values and avoid disturbance of certain areas of cultural significance.

(iii) Evidence and submissions

Four submissions, including that of the Wurundjeri Woi wurrung CHAC, raised concerns regarding the potential impact on Aboriginal cultural heritage and questioned if the Wurundjeri Woi wurrung CHAC had been suitably consulted.

Concerns were raised that the key finding of the due diligence report that significant land disturbance had occurred was inaccurate.

Council submitted cultural heritage issues ought to be dealt with outside the planning scheme amendment process as they are governed under the *Aboriginal Heritage Act 2006*.

The Wurundjeri Woi wurrung CHAC submitted the existing and emerging legislative framework is broader than simply considering the AH Act and included considering obligations and policy under the YRP Act. In their submission the proposal failed to achieve the purpose of managing the Yarra as one living, integrated entity. The submission identified that both Council and Parks Victoria were responsible public entities who had previously worked with the Wurundjeri Woi wurrung CHAC as equal partners in the development of the YSP.

The Wurundjeri Woi wurrung CHAC submitted the CVS had identified and documented the cultural significance of this stretch of the Yarra as set out above. This study had resulted in registration being lodged with the Aboriginal Heritage Register for this cultural landscape as an Aboriginal cultural heritage site in 2020. The Wurundjeri Woi wurrung CHAC submitted the CVS had specifically found that despite land disturbance heritage values remained and therefore they opposed the assertion made in the due diligence report that significant ground disturbance had resulted in the removal of heritage values. In their submission reliance upon the due diligence report was not acceptable in the context of the legislative framework.

The Wurundjeri Woi wurrung CHAC made the following recommendations:

- appropriate zoning and development of lands within the precinct to secure the Birrarung's footprint for the benefit of the river. In their submission this would mean relocation of the proposal out of the declared river lands and set back from cultural places
- that Council, Parks Victoria and Ecoline demonstrate:
 - how the proposal delivers 'net gain' as per the YRP Act
 - how the proposal delivers on the aspirations articulated in the Wurundjeri Woi wurrung CHAC's policy response to the YRP Act
 - what changes in practice will be implemented to improve procedure in future.

Council advised it had provided formal notice of the Amendment and followed up with communications regarding the submission process and culminating in the late submission being received. Council deferred to Parks Victoria for engagement with the Wurundjeri Woi wurrung CHAC prior to this.

It was Council's understanding that the activity area had not been formally registered on the Victorian Aboriginal Heritage Register as an Aboriginal Cultural Place, and no formal application had been made to do so. Nevertheless, Council acknowledged the CVS demonstrated the important significance of the area to the Wurundjeri Woi wurrung people and submitted that that significance would be recognised in a CHMP which it would be prudent to require. It submitted the Amendment was not inconsistent with the exhibited draft YSP which identified sites to be protected for cultural heritage reasons and did not highlight the activity area. As the YSP was not yet finalised, Council submitted the only part of the YRP Act the Panel could take into account was the relevant Yarra protection principles.

Parks Victoria submitted the ropes course was a specific component of the 2013 Concept Plan which had been developed with community consultation including with the Wurundjeri Traditional Owners.

The Proponent submitted they were prepared to undertake a voluntary CHMP and for that to be required by the Incorporated Document. It submitted that a CHMP should be approved prior to project commencement but not necessarily before the approval of the Amendment. In support of this approach, it submitted:

- there was no requirement under the AH Act for a CHMP to be approved prior to approval of a planning scheme amendment
- the willingness to execute a voluntary CHMP was without prejudice to the Proponent's right to argue a CHMP is not mandatory
- whilst there was a question as to whether there had been significant ground disturbance to the area, there was also a question as to whether the activity would constitute a 'high

impact activity’ for the purpose of the Act. The minor ground disturbance required to accommodate the administration building should not be considered significant.

The Proponent submitted the CHMP would serve as a suitable vehicle for ongoing engagement and that in the event that the CVS resulted in the registration of further sites, the Proponent would need to comply with the AH Act.

In relation to the YRP Act, the Proponent expressed confidence the proposal answered those principles. It however questioned the intended role of the principles, submitting that with the exception of section 18 which required the YSP to be prepared having regard to the principles, there was no other statutory reference to the principles and therefore, the YSP is the sole statutory mechanism to give them effect.

The Proponent submitted there was nothing in the proposal that was inconsistent with the Yarra protection principles, draft YSP and Land Use Framework or the draft Bulleen LUFP. In relation to the YSP, the Proponent noted the requirement not to act inconsistently with anything expressed to be binding on a relevant body under the YSP and noted the panel for the YSP had raised concerns that there *“wasn’t actually anything expressed to be binding”*.

In relation to Aboriginal cultural heritage, the Proponent picked up on the intangible nature of some of the aspects of cultural heritage described in the CVS and submitted that this was dealt with in a relatively new part of the AH Act which provided something akin to intellectual property rights for Aboriginal stories and the like. The Proponent submitted it was important to consider how the panel process is to consider unregistered cultural heritage sites in the context of a planning scheme amendment – its submission was the CHMP process is the suitable vehicle for further engagement to resolve the values described in the CVS.

Friends of Banyule submitted the Incorporated Document should include a condition for an agreement to be entered into with the Wurundjeri Woi wurrung prior to the commencement of works.

Dr Cary provided a well-researched summary of the historic use of the site by the Wurundjeri Woi wurrung people and reiterated their views that the proposal ought be relocated.

Acknowledging his expertise as a town planner, Mr Glossop stated that the activity does not trigger a mandatory CHMP and that would be the extent a planning scheme would ordinarily deal with this very important issue. In considering the CVS, Mr Glossop gave evidence that as it was not part of the Banyule Planning Scheme, it should be afforded *“very little weight”* from a town planning perspective.

The Yarra Riverkeeper Association submitted the proposal failed to protect the Yarra as *“one living and integrated entity”* as required by the YRP Act. It submitted the *“proposal conflicts with the cultural principles of the Yarra River Protection Act”*. The Yarra Riverkeeper Association submitted that consultation undertaken with the Wurundjeri Woi wurrung CHAC was inadequate and that given the significant resource and financial constraints on the Wurundjeri Woi wurrung CHAC, it would be appropriate for Council or the Proponent to fund the Wurundjeri to provide advice. He raised concerns the CHMP process essentially licences development at the expense of indigenous culture as Traditional Owners are essentially funded to consent to the destruction of their culture.

(iv) Discussion

The Panel considers the approach to cultural heritage to date has been unsatisfactory. The Wurundjeri Woi wurrung CHAC submission indicates the potential impact of the proposal on cultural heritage could be significant and could require the relocation of the proposal.

The Panel was presented with conflicting submissions as to the extent of historical land disturbance in the project area such that the Panel is not convinced there has been significant land disturbance for the purposes of the AH Act.

The Panel notes the AH Act does not establish or recognise a due diligence process. The undertaking of a due diligence report is no answer to the requirement for a CHMP. The due diligence report was undertaken without any documented consultation with the Wurundjeri Woi wurrung CHAC. The Panel notes the due diligence approach has been criticised by the Victorian Aboriginal Heritage Council.

Whilst the due diligence report indicated the proposal would amount to a high impact activity for the purpose of the AH Act, the Proponent's submission indicated there may now be some question as to whether the proposal (or aspects of it) would be considered high impact activities such that they would trigger the need for a CHMP. Based on its understanding of how the ropes course will be developed, the Panel accepts it is questionable if the activities other than the development of the administration area will amount to a high impact activity for the purpose of the AH Act.

In any event, the Panel agrees with the Wurundjeri Woi wurrung CHAC that the existing and emerging legislative and policy landscape is broader than the AH Act.

The Panel accepts submissions the Amendment is not inconsistent with the draft YSP. It acknowledges submissions that the YSP is in draft form and that the Panel's role is to assess the Amendment against current policy. Having said that, it seems disingenuous to consider the Amendment in a vacuum outside of the emerging policy context and parallel projects that have and are being undertaken to look after the Yarra as a single entity – and to do so in partnership with the Traditional Owners. Particularly considering all of the work is under the Minister for Planning's portfolio.

The Panel agrees with Council that the only aspect of the YRP Act relevant to the Panel's considerations is the Yarra protection principles.

Given section 4AA of the PE Act, which requires the Head of DELWP to have regard to the principles in exercising his functions, the Panel disagrees with the Proponent's submission that the role of the protection principles is limited to guiding the YSP. The protection principles play a broader role in guiding decision making about Yarra River land, including under the PE Act. The principle of partnership with the Traditional Owners is paramount throughout the YRP Act, its principles and surrounding policies. This principle is of fundamental importance to the success of these related policy projects, and it would be inappropriate to have no regard to the principle until such time as subordinate plans are approved.

The submissions indicate that, despite best efforts, this project has not been developed with the partnership and representation of the Traditional Owners that is anticipated by the Yarra River Protection Principles. The submissions establish the Wurundjeri Woi wurrung CHAC have been involved, however the extent of involvement appears to be equal to any other key stakeholder. The Panel considers this is not the approach that is anticipated by the YRP Act. The YRP Act clearly

contemplates an elevated role for the Traditional Owners in decision making affecting Yarra River land.

The Panel considers that there is a threshold issue to determine before the Amendment is further progressed - namely, whether it is appropriate on cultural grounds to continue with the proposal at this location. It is imperative that Parks Victoria, Council and the Proponent initiate discussions with the Wurundjeri Woi wurrung CHAC to establish a true partnership approach aimed at resolving this threshold issue. Considering DELWP's stated role in the CVS of determining how information from it can be used and outcomes implemented, it is important that relevant DELWP officers are also included in discussions to guide the desired strategic outcomes of this site in terms of cultural and Traditional Owner views.

The Panel accepts that a CHMP is a 'suitable vehicle' to drive further consideration of the management of cultural heritage in this area. To the extent that there may be limitations in how the AH Act deals with intangible Aboriginal cultural heritage sites as opposed to intangible Aboriginal cultural heritage knowledge, the Panel considers the wider policy landscape permits a broad interpretation of the two Acts and their interaction, such that a process similar to a CHMP could potentially be appropriate to deal with all the cultural heritage values identified by the CVS.

However, the Panel does not agree that cultural heritage considerations can and should be deferred to a CHMP process. While the Panel accepts the Proponent's submission that there is opportunity for review at the Victorian Civil and Administrative Tribunal under the AH Act for any disputes regarding non approval of a CHMP, the Panel considers a more appropriate approach, and one that is more consistent with the existing and emerging policy and legislative framework, is for high level discussions to precede the commencement of a CHMP to determine whether the values represent a fatal impediment to the project proceeding, or if a mutually beneficial outcome can be achieved through a CHMP.

The Panel acknowledges an Amendment is not a statutory authorisation under the AH Act requiring prior approval of a CHMP. A planning permit however is a statutory authorisation requiring prior approval of a CHMP. Given the nature of this Amendment and the Incorporated Document, being more akin to a planning permit, the Panel considers there to be strong policy grounds for a CHMP to be approved prior to adoption of the Amendment. Likewise, it would be appropriate to ensure the Amendment is only adopted if it is consistent with the approved CHMP.

For these reasons, the Panel considers discussions between Parks Victoria, Council, the Proponent, DELWP and the Wurundjeri Woi wurrung CHAC need to occur imminently to determine if a suitable outcome can be achieved which respects culture and country, and realises potential opportunities for the Wurundjeri Woi wurrung from this Project. If discussions indicate mutual support for the proposal, and a CHMP is considered a suitable next step, then it should be approved prior to the adoption of the Amendment and Council should only adopt the Amendment if it is consistent with the approved CHMP.

Accordingly, the Panel has deleted the CHMP requirements from the Panel preferred version of the Incorporated Document. If, however, Council does not accept the Panel's recommended approach, then the requirement for a CHMP should remain in the Incorporated Document.

The Panel notes the Yarra Riverkeeper Association's submission that funding is required for the Wurundjeri Woi wurrung's involvement. The CVS has already been funded and would appear to have documented the cultural values to an extent appropriate for these discussions and so the

Panel does not consider it necessary to recommend for further funding for such consultations (noting that this is outside the Panel's remit in any event).

(v) Conclusions and recommendations

The Panel concludes:

- The process to date does not demonstrate a partnership approach has been undertaken with the Wurundjeri Woi wurrung CHAC, which would be consistent with the principles of the Yarra River Protection Act 2017.
- As a result, it is unclear whether the Amendment appropriately responds to the cultural heritage values of the land, the river and the surrounding area.
- Discussions between Parks Victoria, Council, the Proponent, DELWP and the Wurundjeri Woi wurrung CHAC need to occur imminently to see if the matter can be resolved.
- The Panel recommends that a CHMP, if appropriate, should be approved prior to the adoption of the Amendment and Council should only adopt the Amendment if it is consistent with the approved CHMP.
- If Council does not accept the Panel's recommended approach, then Council should reinstate the requirement for a CHMP in the Incorporated Document.

The Panel recommends:

Before adopting the Amendment, Council facilitates discussions between itself, Parks Victoria, the Proponent, the Department of Environment, Land, Water and Planning and the Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation to determine whether an appropriate outcome can be achieved for the site through a Cultural Heritage Management Plan process.

Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document, as shown in the Panel preferred version in Appendix D, to:

- **Remove the requirement for a CHMP as this should be concluded prior to Council adopting the Amendment.**

4.2 Historic heritage values

(i) The issue

The issue is whether the Amendment appropriately deals with historic heritage values.

(ii) Background

Planning Scheme

Heritage Overlay HO134 applies to Yarra Flats 340-680 The Boulevard, Eaglemont. Tree controls apply under this Heritage Overlay.

Banyule Thematic Environmental History, 2018

The *Banyule Thematic Environmental History, 2018* prepared for Council, identified twelve historical themes for the Banyule area. Relevant themes included:

- Wurundjeri Country
- Colonial settlement
- Recreation and sport

- Parks, gardens and urban landscape
- The artistic landscape
- Conserving the waterways and bushland.

(iii) Submissions

Four submissions raised concerns the proposal would compromise the heritage value of the park and was not respectful to the significance of the area to the Heidelberg School of Artists.

Ms Roberts implored the Panel to read the Banyule Thematic History and, referring to the Victorian Civil and Administrative Tribunal case for the Banyule Homestead, submitted this area had the potential to deliver something more significant on the education and heritage front which would create a greater tourism opportunity. Ms Roberts also raised issues with potential impact on viewlines that showed the landscape as it had been viewed historically by the Heidelberg School of Artists.

Council provided a copy of its internal heritage advice which had raised no concerns regarding the proposal on heritage grounds.²⁰ This conclusion was on the basis the development would not involve any tree removal, would be substantially obscured by trees and concealed from the main access road. Further, the advice considered that the limited built structures proposed should blend in visually and bright colours should be avoided. The heritage advice identified an opportunity to pay homage to Heidelberg artists through appropriate naming of platforms and the like.

(iv) Discussion

The Panel does not consider either the thematic study or the case involving the Banyule Homestead demonstrate the proposal is incompatible with the historic values of the site or the area. Whilst there may be other opportunities for educational activities to occur on the site, these are not before the Panel and would not necessarily be mutually exclusive to the proposal being considered.

The Panel accepts the heritage advice from Council, however notes the acceptability of the proposal appears to be based on an assumption that key viewlines will not be interrupted by either gaps in the canopy or the use of bright colours in the development. The Panel considers that mention of these aspects should be included in the Incorporated Document to ensure that potential impacts are avoided.

The Panel notes the suggestion for historic naming to pay homage to the Heidelberg artists and commends this idea to the Proponent to consider.

(v) Conclusion and recommendations

The Panel concludes:

- Subject to the following recommendations, the Amendment appropriately respects historic heritage values.

²⁰ Document 128

The Panel recommends:

Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document, as shown in the Panel preferred version in Appendix D, to:

- **Amend condition 6.2 to include a requirement for the administration area that any painted or coloured structure surfaces are to be finished in muted tones**
- **Amend the pruning condition to ensure any necessary canopy pruning does not interrupt the key historic viewlines.**

5 Ecological values

5.1 Background

Exhibited material

The following reports were exhibited with the Amendment:

- Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan, Yarra Flats TreeTop Adventure Park, Ivanhoe East (Practical Ecology, December 2018) (the exhibited Flora and Fauna assessment)
- Arboricultural Tree Health and Hazard Assessment [2018 update], TreeTop Adventure Park Yarra Flats, Ivanhoe East (Russell Kingdom, 2018)
- Native vegetation removal report (DELWP generated report, 9 November 2018)
- Biodiversity impact and offset requirements report (DELWP generated report, 28 July 2016).

Peer reviews

Council commissioned the following peer reviews to assist their assessment:

- Peer review Arboricultural Tree Health and Hazard Assessment of the proposed tree top climbing and adventure facility by Ecoline (Arborist Reports Australia, 2 June 2021)²¹
- Peer review of ecological reports for the proposed Banyule Planning Scheme Amendment C107bany for a Treetops Ropes Course Development, Ivanhoe East, Victoria (Ecology and Heritage Partners, 8 June 2021).²²

Updated reports

The Proponent circulated the following updated reports in response to submissions, peer review and more recent data:

- Addendum to the Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan, Yarra Flats TreeTop Adventure Park, Ivanhoe East Report (24 March 2021) (the March Addendum)²³
- Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan, Yarra Flats TreeTop Adventure Park, Ivanhoe East (Practical Ecology, June 2021) (the 2021 Flora and fauna assessment).²⁴

Expert evidence

Parties called the following experts:

- Proponent:
 - Mr Kern of Practical Ecology on ecology, flora and fauna
 - Mr Patrick of Open Space Management on arboriculture
- RCSH:
 - Professor White of the University of Melbourne on soil science
 - Mr Daniel of Global Urban Forest on water and soil health

²¹ Document 56

²² Document 57

²³ Document 61

²⁴ Document 60

- Professor Richards of McGregor Coxall on arboriculture
- Mr Gentle:
 - Mr Lane of Nature Advisory on ecology.

5.2 Vegetation impacts

(i) The issues

The issues are whether:

- potential native vegetation losses have been appropriately calculated
- the Project proposal will result in an acceptable impact on native vegetation, including large old trees
- the Amendment has appropriately addressed potential impacts on native vegetation.

(ii) Relevant policies and guidelines

Clause 52.17 of the Planning Scheme aims to ensure no net loss to biodiversity as a result of removal, destruction or lopping of native vegetation. This is achieved through a three step process outlined in the *Guidelines for the removal, destruction and lopping of native vegetation* (DELWP, 2017a) (the Guidelines). The three step approach is described as:

- avoid the removal, destruction or lopping of native vegetation
- minimise the impacts on vegetation that cannot be avoided
- provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.

Clause 52.17 sets out permit requirements including application requirements as specified in the Guidelines. Offset requirements set out in Clause 52.17-5 require biodiversity impacts to be offset and for permit conditions to specify the offset requirement and the timing to secure the offset.

There are three assessment pathways provided by the Guidelines, based on the location of the vegetation to be removed. Under Clause 66.02 DELWP are a recommending referral authority for any applications in the Detailed Assessment Pathway (most comprehensive).

Application Requirement 9 under the Guidelines requires:

An offset statement providing evidence that an offset that meets the offset requirements for the native vegetation to be removed has been identified, and can be secured in accordance with the Guidelines.

A suitable statement includes evidence that the required offset:

- is available to purchase from a third party, or
- will be established as a new offset and has the agreement of the proposed offset provider, or
- can be met by a first party offset.

The Guidelines provide example permit conditions.

(iii) Background

Exhibited Flora and Fauna Assessment

The exhibited Flora and Fauna assessment identified the activity area vegetation as being Floodplain Riparian Woodland EVC in moderate condition dominated by large river red gums

approximately 20 metres tall. There were some native understorey trees and shrubs with a high cover of exotic shrub species. The EVC is endangered, and the habitat score was 0.39 with 15 large old trees.

No rare or threatened flora were identified or expected to occur in the study area due to the highly modified nature of the vegetation and high weed cover.

In accordance with the Guidelines, the proposed vegetation removal requires a detailed assessment.

The exhibited Flora and Fauna assessment identified a small area of remnant vegetation required to be removed to allow for the administration building with the nearest tree being retained in decking (defined as the construction zone). In the remainder of the site (defined as the modified conservation zone and fuel modified conservation zone) no vegetation or tree removal was proposed, only pruning and dead wooding.

In terms of calculating the proposed loss for the purpose of the DELWP Guidelines, the report assumed 100 per cent loss of the existing biodiversity score for the area of the administration building and 50 per cent loss of the existing biodiversity score for the remainder of the activity area.

This resulted in a proposed removal of 0.489 hectares of native vegetation for the purposes of the Guidelines. These calculated native vegetation impacts required the following offset:

- 0.184 species of habitat units of habitat for the grey-headed flying fox
- 0.204 species units of habitat for pink mountain correa
- no trees were required to be offset.

Further investigations revealed evidence of an error in the DELWP model causing pink mountain correa to appear outside of its natural range. Based on this, the report proposed not to consider offset requirements for this species.

An offset strategy was provided which advised offsets could be located either on land owned by the landholder (first party offsets) or on land owned by a third party (third party offsets). The strategy advised the site was ineligible for the provision of first party offsets because the site was on Crown land, managed by Parks Victoria and the size of the offset zone was likely to be too large for the site (requiring greater than 8 hectares of remnant vegetation). Instead, third party offsets were proposed and evidence of their availability was included with the report.

The following plans were recommended:

- Fauna Management Plan
- Construction Environment Management Plan
- Weed Management Plan.

Further recommendations dealt with indigenous planting, tree pruning methods and marking of zones prior to vegetation clearance.

March Addendum

The March Addendum included correspondence between Practical Ecology and DELWP regarding the modelling error relating to the pink mountain correa and resulted in a revised Native vegetation removal report issued 15 January 2019 by DELWP which only included the offset requirement for 0.184 species units of habitat for grey-headed flying fox.

The 2021 Flora and Fauna assessment

The 2021 Flora and Fauna assessment was written in response to requests for further information from Council and DELWP after a planning scheme amendment application was made on 11 May 2018.

In relation to native vegetation impacts, a summary of the native vegetation calculations, achieved by using the same method as the exhibited Flora and Fauna assessment, was provided as shown in Table 2.

Table 2 Summary of native vegetation removal calculations

Summary item	Result
Construction zone – assumes a complete loss of native vegetation (100 per cent)	0.029
Modified conservation zone and fuel modified conservation zone – assumes partial loss of canopy through dead wooding, mid and some understorey vegetation (50 per cent)	0.385
Number of large trees to be removed	0
Total extent of proposed removal	0.414 ha

Source: Adapted from Appendix 4 of the 2021 Flora and fauna assessment

In relation to offsets the report stated that:

If a permit is granted to remove the selected vegetation, a requirement to obtain a native vegetation offset will be included in the permit conditions. The offset must include the following requirements:

- 0.168 species of habitat units of habitat for Grey-headed flying fox
- 0 trees

The offset strategy advised that *“at this point in time the required offset is not available for purchase on the Native Vegetation Credit Register”*. The strategy explained the challenge was that most of the mapped habitat for grey-headed flying fox had shifted to urban areas which creates difficulties in finding an offset for the species. The strategy stated *“it is possible create an offset on public land through revegetation works and such work could be implemented in close proximity to the study site if appropriate and approved by Parks Victoria.”* The strategy considered this to be a superior option to third party offsets as they are often not in close proximity to the site of the impact. The strategy concluded:

If the option of a local revegetation project within Yarra Valley Park is acceptable and implemented there will need to be an effort made to determine an appropriate site with Parks Victoria, a revegetation project with long term maintenance meeting requirement standards would need to be designed and then implemented.

(iv) Evidence and submissions

Extent of impact

Forty-five submissions raised concerns with the potential removal of native vegetation and trees.

Mr Gentle submitted the extent of vegetation removal was indeterminant and represented a ‘blank cheque’. Mr Gentle submitted the Panel’s role was to ensure the Incorporated Document provides suitable regulation to replace the planning controls which would otherwise apply. Referring to evidence of Mr Kern that ‘not much’ vegetation removal would be required, Mr Gentle submitted the Incorporated Document and Incorporated Plans as drafted do not contain

any formal limitation on the amount of vegetation that could be removed. Further there was general uncertainty as to the amount of vegetation being sought to be removed.

Mr Kern gave evidence for the Proponent. His evidence was that the *“actual physical impacts of the proposed self-guided high ropes course would be quite limited”*. He explained potential losses would arise from a need to:

- clear a limited area of the shrub layer for landing pads and zip line bases
- remove lower branches of trees to ensure no access out of hours
- clear safe pathways around tree trunks and through canopy by removing tree branches, tall understorey trees and shrubs.

Mr Kern stated considering the fairly open woodland, the need to remove vegetation to clear safe pathways would be minimal. Mr Kern was confident the current design and management approach would result in minimal native vegetation impact. He explained the 50 per cent loss of habitat score used to calculate the required biodiversity offset was the lowest possible loss in the model used by DELWP to calculate offset requirements. In this case, this would represent an overestimate of the actual impact of the proposal.

The Proponent submitted *“the calculation of losses reflects the constraints of the software applied by DELWP to calculate losses for offsetting purposes. It does not reflect the reality of the use”*. The Proponent emphasised that it was important *“not to confuse the extent of ‘loss’ calculated for offset purposes, with the actual impact of the course”*.

Mr Patrick gave evidence for the Proponent that of the 62 trees in the activity area, only 23 would need pruning which would be minimal.

Council submitted the extent of clearing of native vegetation was limited by the Incorporated Document’s reference to be “in accordance with” the Flora and Fauna assessment and was unlikely to result in significant impacts.

Council advised DELWP had agreed that defensible space was not required as there were no residential uses proposed.

Mr Gentle called Mr Lane to give ecological evidence. Mr Lane considered the Flora and Fauna assessment had correctly assessed impacts on native vegetation in accordance with Clause 52.17 and the Guidelines. He gave evidence the removal or alteration of vegetation would significantly compromise the ability of the area to provide fauna habitat and habitat linkages in the Yarra Valley vegetation corridor.

The Proponent submitted that, in the context of the North East Link Project (NELP), it was ironic that this proposal was considered contentious from an ecological point of view, given that Mr Lane’s evidence in that case was supportive of a total loss of 52 hectares of vegetation.

Council referred to Mr LeBel’s (of Ecology & Heritage Partners) review of the exhibited Flora and Fauna assessment which concluded it adequately addressed the relevant application requirements under Clause 52.17, with the exception of the offset requirements. Mr LeBel’s peer review referenced the modelling error for the pink mountain correa, but concluded that in order to comply with the Guidelines, written approval from DELWP Secretary is required to seek a variation from the existing offset obligations.

Mr Kern gave evidence the March Addendum including the updated Native vegetation removal report obviated the need for such approval as pink mountain correa offsets were no longer required.

Offsets

Mr Kern gave evidence the offset requirements for the proposal were minimal and limited to 0.168 species units of habitat for grey-headed flying fox. He reiterated that offsets were currently unavailable but advised he believed they would be achievable either through such credits becoming available in the future, or through creating offsets on public land with the approval of Parks Victoria or appropriate public land manager.

Incorporated Document changes

Council's Final Incorporated Document proposed changes to:

- truncate the name of the Flora and Fauna assessment
- specify Chapters 8 and 9 of the 2021 Flora and Fauna assessment in Clause 5.0 and condition 6.12
- make minor changes to the vegetation removal condition to ensure it was limited to native vegetation.

The Proponent's Final Incorporated Document proposed slightly amended wording to condition 6.12 'Vegetation removal', to:

- include the potential for written approval of the Responsible Authority to permit further native vegetation clearance
- ensure vegetation removal is carried out in a manner to avoid lopping of trees containing hollows.

The Proponent also submitted the Incorporated Document should be amended to update the reference to the latest Flora and Fauna assessment of June 2021 throughout. Council agreed. The Proponent did not agree to Council's proposed change to specifically reference Chapters 8 and 9 of the Flora and Fauna assessment in Clause 5.0, submitting the clause should refer to the document in its entirety for the purpose of the Incorporated Plans. The Proponent agreed to the reference in condition 6.12.

(v) Discussion

Submissions and evidence regarding habitat values is discussed in Chapter 5.4.

This Panel was not involved in the NELP and can only assess this proposal on what is before it. That is to say, the Panel makes no comment as to the veracity of Mr Lane's evidence in the context of previous evidence. Noting the amount of vegetation loss for the NELP and acknowledging the amount of vegetation loss for other projects, the Panel considers the potential loss of native vegetation for this proposal to be minimal and to be a locally significant impact only.

The Panel disagrees that the amount of potential vegetation loss is indeterminate however considers the Incorporated Document could specify the maximum potential vegetation loss for ease of reference, transparency and to provide reassurance to the community. The Panel therefore disagrees with the Proponent's proposed wording allowing further removal with written approval of Council.

The Panel accepts that defensible space is not required.

The Panel agrees the approach to calculating native vegetation losses is appropriate, consistent with the Guidelines and likely to overestimate the impact. The Panel accepts the evidence and documentation that specific species offsets for the pink mountain correa are not required.

In relation to trees, the Panel considers there may have been some confusion arising from these calculations as to the potential removal of trees. The Panel is satisfied that no trees are required to be removed to facilitate the proposal. Trees are further discussed in Chapter 5.3.

Unlike the exhibited Flora and Fauna assessment, which included evidence of available offsets, the Panel does not consider the offset strategy provided in the 2021 version adequately addresses Application Requirement 9 for an offset statement. Although the possible options presented sound feasible, the lack of certainty and detail falls short of the requirements. Considering the Incorporated Document will 'switch off' other planning controls, it is important this issue is resolved and that the 2021 Flora and Fauna assessment is updated prior to adoption of the Amendment.

As DELWP are a recommending referral authority for permit applications in the detailed assessment pathway, the Panel considers it appropriate for the offset statement contained within the updated report to be developed in consultation with DELWP, to the satisfaction of the Responsible Authority.

Consistent with the approach for a permit, the Panel considers the Incorporated Document should include a condition specifying the offsets to be provided and preventing any native vegetation removal until evidence of secured offsets is provided. The Incorporated Document should also include the requirement for an offset management plan which would outline management commitments for the offset site consistent with the Guidelines. The Panel notes such a permit condition was anticipated by the 2021 Flora and Fauna assessment.

The Panel has suggested wording for these conditions consistent with this intent in Appendix D.

Whilst the Panel appreciates that Council was attempting to be more specific by referencing Chapters 8 and 9 of the Flora and Fauna assessment in Clause 5.0, the Panel prefers the Proponent's approach to refer to the complete document. Considering Chapter 6 of the Flora and Fauna assessment largely addresses Clause 52.17, the Panel considers it appropriate for the vegetation removal condition at 6.12 to either reference Chapter 6 as well or to reference the whole report. The Panel has recommended the whole report be referenced as originally exhibited.

The Panel agrees to specifying that condition 6.12 relates to 'native' vegetation as opposed to all vegetation and considers the heading should also be updated.

The Panel otherwise agrees with the minor wording changes recommended by Council in its Final Incorporated Document.

(vi) Conclusions and recommendation

The Panel concludes:

- The approach used by Mr Kern was appropriate and would have overestimated the potential vegetation losses.
- The proposal will result in a loss of native vegetation, but that loss is considered to be acceptable.
- The issue of offsets needs to be resolved prior to the adoption of the Amendment.
- The Incorporated Document should require evidence of offsets having being secured prior to the removal of any native vegetation.

The Panel recommends:

Amend the Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan, Yarra Flats TreeTop Adventure Park, Ivanhoe East (Practical Ecology, June 2021) to:

- **Provide a detailed offset statement that addresses Application Requirement 9 of the *Guidelines for the removal, destruction and lopping of native vegetation* (DELWP, 2017a), in consultation with DELWP and to the satisfaction of the Responsible authority.**

Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document, as shown in the Panel preferred version in Appendix D, to:

- **Update references to the final Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan, Yarra Flats TreeTop Adventure Park, Ivanhoe East to the final version (date to be determined)**
- **Amend the wording of the Vegetation Removal conditions to:**
 - a) **Specify the maximum native vegetation loss and to delete the potential for further written approval from the Responsible Authority**
 - b) **Specify the offsets required to be provided**
 - c) **Require evidence of a security agreement for all offsets, including an offset management plan, prior to the removal of any native vegetation.**

5.3 Trees

(i) The issues

The issues are whether:

- the trees are suitable for the proposed use
- the Visual Tree Assessment method was appropriate to determine tree health and suitability for this purpose
- the Amendment appropriately deals with potential impacts on trees.

(ii) Background

The Tree Health Hazard Arboriculturalist Report provided the following findings:

- there was no evidence of soil compaction and no usage that would compact the soil
- all trees surveyed were suitable for retention and the proposed purpose
- some trees (approximately 11) required removal of deadwood
- there are a few selected trees with visual defects requiring minor branch (less than 100 millimetre in diameter) removal. Despite these defects, each of these trees is considered to pose an acceptable level of risk
- the works would be minor pruning of vegetation to maintain or improve health or appearance and would require a permit under the ESO4
- annual inspections (including removing apparatus) should be carried out to mitigate potential risk of future problems
- it may be necessary to move the apparatus either up or down the tree trunk every three years, to ensure that the point of contact is not weakened and there is not an increased level of risk of failure
- extra inspections should be carried out after extreme weather events

- no trees will be removed
- existing weed species need to be managed
- the only works to trees would be removal of deadwood and possibly a small branch to ensure line of sight of the course
- two trees with hollows were identified, one which provided parrot habitat
- compaction on footpaths and trails will occur due to the proposed activities. This could be managed through leaf mulch, woodchip mulch or gravel and would be guided by Parks Victoria requirements
- Tree 1 (the Home Tree) is at most risk of compaction and will be protected by a deck which will allow infiltration and be constructed to avoid impact to roots
- TPZ not required
- any crown reduction to comply with *AS 4373-2007 Pruning of amenity trees* (AS, 2007).

(iii) Evidence and submissions

Soil compaction and stress

In addition to tree removal, submitters were concerned about damage from the use including the removal of canopy and attachment of the ropes course and from the compaction of soil around the trees.²⁵ There was concern that public safety would override habitat considerations and trees would be excessively pruned for safety or insurance reasons.²⁶

The RCSH raised concerns about the proposal's effect on tree health in the context of existing and historical stresses including compaction and major changes in hydrology. Referring to articles by Dr Greg Moore²⁷, the RCSH submitted existing and potential increases in compaction could lead to limb shedding and tree failure. In support of this, RCSH submitted photographs of nearby fallen trees and stated all these trees had been subject to changes in hydrology, were protected from prevailing winds and illustrated very small root systems (being a result of stress).

Professor White gave evidence for RCSH there was lots of existing compaction which could be exacerbated by foot traffic in wet conditions. He stated critical soil properties indicates the potential for further compaction under dry conditions. He considered that soil compaction affects the ability of roots to penetrate the soil.

Professor White conceded that despite the encountered soil conditions, the vegetation seemed to be doing well and that there could be various reasons for this, including the well-watered nature of the site, however this was not conclusive as to the depth of the root profile. He stated, "*the trees could thrive even though not particularly deep rooted*".

Professor White described common compaction causes widely known in the grazing industry as tractors, sheep and cattle. He was unsure of the type of human visitation considered in this context but gave evidence that lots of people with shoes including high heels walking across wet soil would lead to further compaction.

Professor Richards of Coxall McGregor and Mr Daniel of Global Urban Forest provided a detailed and comprehensive joint written statement of evidence on water and soil health. The evidence

²⁵ For example, submitters 26, 30, 38, 42 and 71, 73 and 169

²⁶ Submitter 133

²⁷ Dr Greg Moore, the inaugural president of the International Society of Arboriculture, Australian Chapter.

observed that urbanisation increased impervious ground cover and resulted in the funnelling of surface water, leading to increased problems such as flash flooding, groundwater depletion and urban tree fall risk.

Mr Daniels identified that the water cycle is an often-overlooked element of soil and tree health and that the *“poor soil health conditions at site had led to soil borne disease and tree decline”*. He considered that the soil compaction at the site was showing the results of historic impacts which would be affecting tree health. He agreed his visual tree assessments (VTA) would align with those of the arboriculturalists, however he expressed concerns that the method of a VTA does not assist with assessing the underground health of the tree. Mr Daniels concluded that an ecosystems approach to the water cycle was required prior to considering if the trees on site could support the development.

Mr Patrick had no concerns regarding soil compaction. He stated that river red gums are extremely deeply rooted and adaptive to different soil conditions including flood and dry. He considered *“fallen branch and leaf material add inaccessibility to most of the site but also contribute to requisite organic mulch”* and gave evidence the fallen trees were outside the area of the proposed ropes course.

Considering tree health, structure and the attributes of *Eucalyptus* genus and river red gums in particular, Mr Leenstra’s peer review of the Arboricultural Tree Health and Hazard Assessment (for Council) found *“no reason why the installation of platforms, cables and a ropes course in the selected trees should not occur.”*

The Proponent submitted three arborists agree the nominated trees were suitable for the course. The Proponent clarified the additional trees surveyed by Mr Patrick were viewed to identify the capacity of the course to adapt to changes in the tree conditions overtime.

The Proponent provided a summary document of its Operational Management Practices (OMP) which advised fencing is only used if requested by the public land manager on ecology grounds. In this case it’s anticipated general public will be able to wander on existing paths under the ropes with signage reminding people not to digress from designated pathways. The outlined OMP also included the implementation of an Environmental Management Plan which is to cover design, construction and operational aspects with respect to the natural environment, including outlining timeframes and responsibilities.

Mr Patrick gave evidence he largely agreed with the findings of the exhibited Arboriculture report and considered minor differences of opinions on individual tree attributes allowable.

The Proponent and Council referred to Mr Leenstra’s peer review which considered the VTA was an appropriate method which considered root issues and that the existing mature trees were a testament to the resilience of this tree species in the face of stress. Mr Leenstra’s view was the examples of fallen trees were a result of wind throw in an area separate from where the Proposal was planned. Mr Leenstra’s peer review found no evidence of major limb or tree failure in the activity area.

Council submitted the concerns raised about the VTA was at odds with the wide acceptance of this method of tree assessment by *“many a VCAT, panel and advisory committee proceeding”*.

Incorporated Document

Mr Leenstra’s peer review made a number of comments on the Arboriculture Report including that:

- TPZs are required and the TMPP needs to be specific to this
- the (immature) age of the trees meant some room to grow needed to be accounted for in the mounting of the infrastructure
- the trees are generally in good health, with minimal evidence of limb shed that is generally around the perimeter where trees are exposed to wind shear
- additional detail of pruning is required where pruning is not required for arboriculture reasons (eg, lower limbs that may need to be removed to prevent unapproved access)
- additional detail of the proposed attachment method is required (Mr Leenstra's understanding was the Proponent will adopt arboriculture best practice by avoiding using nails or bolts to mount the platform. He mentioned an example of an attachment method which requires no spikes penetrating the tree)
- in his experience, where a minimal amount of spikes or nails have been used, there is no evidence of associated tree decline. He attributed this to the resilience of trees and, in particular, eucalypts
- there is a trade off between public safety and tree health with public safety paramount
- there is a preference for arboricultural best practice and if these methods are available, they should be used.

Mr Patrick provided the following comments on the exhibited Incorporated Document:

- TPZs are not relevant in the forest context where roots are inter-twined, although they might be relevant for single freestanding trees or small groups. TPZ are more applicable to building sites and essentially relate to potential construction in close proximity and potential root loss
- no scaffolding will be used in set up (Condition 6.7 (g))
- no roots over 25 millimetres will be severed (AS 4970) (Condition 6.10 (b)(iii))
- fencing is not relevant as it just adds unnecessary site activity and traffic (Condition 6.10(d))
- weeds will be removed (Condition 6.11)
- deadwood and over-extended limbs may need pruning (Condition 6.12)
- there will be no vehicles on site, the physical impacts on ground will be minimal (Condition 6.26).

Mr Kern gave evidence the nature of the proposal required a nuanced approach to tree management, balancing the requirements of the Australian Standards with the particular site objectives to retain as much habitat value as possible. An example was the pruning of limbs or deadwood – the Australian Standards dictated limbs should be cut at the collar, whereas ecological outcomes may be better served if limbs were cut to allow the retention of any useful hollows and for cuts to be ragged, which might accelerate natural processes to create new hollows.

In response to submissions and evidence, Council proposed the following changes in its Final Incorporated Document:

- at Condition 6.7, a TMPP to be prepared:
 - to the satisfaction of the public land manager (whilst still being approved by the Responsible Authority)
 - by both an arborist and ecologist – submitting it was important to have a breadth of experience
- at Condition 6.8, for the TMPP to include and provide for:

- the management of trees to be 'generally in accordance with' the Australian Standard to allow arborists to use their judgement but use the standard as a base
- punctures to be avoided
- any recommended down time for particular trees to be rested
- measures for tree protection and identification of trees requiring a tree protection zone – in the face of differing evidence on the need for TPZ, allows project arborist to determine
- details for how root systems are to be managed (removing allowance for them to be impacted)
- details of the extent of canopy works
- deleted the requirement for details of pruning to reference the Australian Standard and relocated the 15 per cent canopy rule
- the TMPP to have regard to the recommendations in Chapters 8 and 9 of the 2021 Flora and fauna assessment.
- at Condition 6.13, Pruning:
 - to provide some latitude for pruning to be generally in accordance with the AS, subject to the desirability to avoid tree hollow removal to the satisfaction of the responsible authority
- at Condition 6.14, Extent of pruning:
 - to restrict pruning to the removal of deadwood and minor weight reduction unless in accordance with the TMPP.

Responding to and building on the above changes, the Proponent proposed the following additional changes:

- at Condition 6.8, for the TMPP to include and provide for:
 - the management of trees to be 'generally in accordance with' the Australian Standard *and* the recommendations of Chapters 8 and 9 of the 2021 Flora and fauna report – relocating this to the first sub-clause.
 - the inspection of tree hollows prior to the construction process.
- at Condition 6.11, Vegetation removal –
 - for vegetation removal to avoid lopping of trees containing hollows.

Friends of Banyule submitted changes to the Incorporated Document to achieve the following:

- ensure deadwood and hollows remain on site as much as reasonably practicable.
- limit compaction as much as possible by providing boardwalk pathways.
- for all tree pruning to be limited to 15 per cent and to be supervised by an approved arborist.

Ms Roberts submitted changes to the Incorporated Document to ensure a well mulched area was provided near the Administration Office to limit compaction.

(iv) Discussion

The Panel accepts the evidence and submissions that VTA are a well-accepted and appropriate method for tree assessment. The Panel accepts the evidence of the arborists who have assessed all trees on site that the trees are suitable for the proposed use.

The Panel accepts submissions and evidence that soil compaction may in some instances affect tree health. It is hard to imagine what the proposal will bring in terms of people viewing the activities from the ground. The image of hordes of people traipsing the area in boots or high heels

is disconcerting. The Panel considers this unlikely based on the limited existing trails (which the Proponent has indicated will be stuck to) and the high level of weed cover – which when removed, will be replaced by plantings which would be in the Proponent's interest to protect. Further the existing and likely continued level of leaf litter or other mulch can assist in natural processes to improve the soil. In addition to this, Melbourne Water's planned wetland system will increase flooding of the area directly below the ropes course – further deterring high numbers of people walking around the site off the tracks. To the extent the activity area will be accessible to the general public to walk around – it is already and would continue to be if the proposal did not proceed (acknowledging the abovementioned limitations of dense weed cover and limited trails).

The Panel does not consider it necessary at this stage for the proposal to provide boardwalk pathways, on account of the intention to use existing trails. Boardwalks should be considered, if necessary and desirable, in conjunction with Melbourne Water as part of their planned wetland improvements. The Panel considers the decking to be provided around the Administration Office will address Ms Roberts concerns regarding compaction in this area.

The Panel considers monitoring of trees, consistent with the Arborist Report, is required. Monitoring should be holistic and include consideration of soil health and its potential to impact tree health. Outcomes from this should inform any additional mitigation measures required.

The Panel considers the pruning requirements suggested by Friends of Banyule are covered in Council's Final Incorporated Document.

The Panel accepts evidence that this environment has changed and been subject to many stresses over time, including as a result of urban development significantly changing the natural water regime. This is not a pristine environment. Melbourne Water's planned wetlands will help to address some of these issues.

In relation to the additional trees surveyed by Mr Patrick for contingency measures, the Panel notes the 2021 Flora and Fauna assessment has been very specific in assessing the impact of the proposed course design to satisfy the native vegetation removal requirements. Any contingency outside of this will need to re-consider such requirements afresh.

The issue of public safety from falling trees or limb drop is discussed in Chapter 7.4.

In relation to the proposed changes by Council and the Proponent, the Panel accepts all of the changes proposed. In addition to these, the Panel considers it appropriate for the TMPP to include:

- a monitoring regime including:
 - annual monitoring
 - periodic monitoring after severe weather events (including storms and prolonged periods of wet or dry conditions)
 - and potentially 3-year reviews to be more detailed than annual inspections, to directly inform the necessary relocation of apparatus
- consideration of arboricultural best practice in designing and choosing apparatus to attach platforms and structures such that the use of punctures is further avoided.

The Panel accepts it would be a good outcome for any severed limbs or hollows to remain on or nearby the site as much as reasonably practicable to provide habitat and other benefits.

The Panel has suggested wording for these conditions consistent with this intent in Appendix D which may be refined further by Council.

The Panel recognises an Environmental Management Plan as outlined in the Proponent's submission is also a standard operational procedure for these courses. The Panel considers that given the high level of interest in the proposal and the Yarra Flats park, Council and the Proponent may consider it appropriate for the Incorporated document to outline this management plan as well.

(v) Conclusions and recommendations

The Panel concludes:

- VTA are a well-accepted and appropriate method for tree assessment.
- The identified trees are suitable for the proposed use.
- The potential impact of increased soil compaction needs to be considered in the context of the existing conditions, planned wetland construction and existing ability for the general public to access the site.
- Any additional trees to be used that have not been assessed in the Flora and Fauna assessment will need a separate assessment and approval process.
- Subject to the proposed and recommended changes, the Incorporated Document will appropriately respond to issues relating to trees.

The Panel recommends:

Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document as shown in the Panel preferred version in Appendix D to:

- **Make changes to tree controls in line with the Proponent's final version of the Incorporated Document.**
- **Add a requirement for the Tree Management and Protection Plan to include:**
 - a) **a monitoring regime**
 - b) **consideration of arboricultural best practice in designing and choosing apparatus to attach platforms and structures such that the use of punctures is further avoided**
 - c) **on site or nearby retention of any severed limbs, deadwood or hollows of trees.**

5.4 Habitat impacts

(i) The issue

The issue is whether the Amendment appropriately deals with potential loss and disturbance of fauna habitat.

(ii) Evidence and submissions

Ninety-two submissions raised concerns with the potential impact on habitat and wildlife including impacts from tree pruning, and human activity increasing noise.²⁸ Specific species of mention included the powerful owl. Submitters stated these trees provided habitat which was even more

²⁸ For example submissions 75, 83 and 94.

valuable considering the impacts of the NELP.²⁹ The Warringal Conservation Society submitted pruning of trees would diminish wildlife habitat value.

Mr LeBel's peer review recommended the Incorporated Document include the requirement for a FMP, to which Council and the Proponent agreed. Mr LeBel recommended such FMP include provisions for ongoing monitoring of the use of the activity area by fauna and mitigation measures such as salvage or relocation, should these species occur.

The Warringa Conservation Society submitted powerful owls use the activity area and without targeted surveys, the importance of the site to them cannot be assumed. Mr Gentle submitted that powerful owls would be at greater risk of extinction if the proposal proceeds. Mr Gentle based this conclusion on the potential impact on trees including the practice of dead wooding and removing unsafe limbs which could result in the removal of existing hollows or potential future hollows. Mr Gentle's submission referenced Mr Kern's evidence that it would typically take up to a hundred years for a hollow to reach the minimum required depth of 500 millimetres for a powerful owl to lay eggs and roost.

In addition to potential future roosting habitat, Mr Gentle submitted habitat disturbance of other species would limit the use of the activity area by the powerful owl for hunting at night.

Mr Kern gave evidence the degraded nature of the site limited the potential use by fauna. However he conceded *"the large trees on the site represent an important habitat value that is threatened across Yarra Valley Park, metropolitan Melbourne and beyond"*. He stated there was no formal research to provide insight into the potential for impacts from the ropes course on hollow dwelling species, but his opinion was that it was possible this activity would cause arboreal mammals and birds to find the potential habitat less desirable or even unusable. Mr Kern considered however that in the context of available habitat across the Yarra Flats park and proposed mitigation in the form of a nest box program and FMP, the potential minimal impacts should be adequately compensated.

Mr Kern's view was the FMP should guide the salvage and translocation process and provide for ongoing monitoring of tree hollows.

Responding to concerns about powerful owls, Mr Kern's evidence was that powerful owls are quite successful in urban Melbourne, feasting on possums and flying foxes and hunting across large areas of land (600-800 hectares in an urban context compared with 6000 hectares in natural forest). Mr Kern stated there was no evidence that any suitable roosting or breeding sites exist in the activity area which would instead only likely be useful as hunting territory, similar to most of urban Melbourne.

Mr Kern responded to submissions that noise made by people on and along the course would cause significant disturbance. Based on his experience at similar ropes courses, the level of noise created by users would be relatively minimal. He explained that nerves and concentration would likely cancel the urge for course users to scream. Despite this, he recognised that such noise would potentially impact on fauna.

Mr LeBel's inspection identified one hollow in the course trees. Mr Patrick's inspection identified no large hollows suitable for fauna within the trees of the designated course.

²⁹ For example see submission 77 and that of the Warringal Conservation Society.

In relation to the requirement for a FMP, Council and the Proponent were in agreement of the final wording being:

A Fauna Management Plan (FMP) to the satisfaction of the public land manager, must be submitted to, and approved in writing by, the Responsible Authority. When approved the FMP will form part of this Incorporated Document. The FMP must address the requirement for ongoing monitoring of the site by both significant and locally occurring fauna, as well as measures to mitigate impacts to individuals/populations should these occur.

Friends of Banyule submitted the Day 1 Hearing version of this clause should identify a responsible authority for fauna management and queried if that should be Council, Parks Victoria or DELWP.

One change that was made by the Proponent to Council's Day 1 Hearing version was for the FMP to be to the satisfaction of the public land manager (Parks Victoria) as opposed to the responsible authority. Council agreed in its Final version.

Mr LeBel's peer review suggested the Land Management Plan should include provision of nest boxes to ensure habitat availability is not reduced.

Mr Kern supported this to the extent it was based on a documented needs case. His evidence was that any nest box program should start with an assessment of existing hollows to determine species present who could benefit from such a program. A nest box program should then be designed in response to baseline conditions including provision for appropriate box design, to ensure temperature control, strategic location and ongoing monitoring. Mr Kern considered a nest box program could be included in the FMP. His evidence stated:

The FMP would need to be broader than just a nest box program of course, beginning with establishing objectives and process within an adaptive management framework, a monitoring plan, collecting baseline data, establishing thresholds for actions and developing then implementing appropriate actions.

Consistent with Mr Patrick's evidence regarding the shortcomings of strictly applying the AS for tree pruning, Mr Kern's evidence was that that pruning to strict arboriculture methods might not provide the best ecological outcome when alternate techniques could assist in creating future hollows.

Mr Lane's evidence was that the Flora and Fauna assessment failed to consider impacts on fauna and the role of the site in the context of the wider Yarra Valley vegetation corridor. In his evidence, the report had not adequately considered the impact of the removal of tree hollows, a rare fauna habitat resource, or the potential impact of visitation on fauna using hollows for shelter and breeding. Mr Lane considered this impact to be significant in the context of the lack of hollow-bearing trees in the remainder of the park and wider area. Mr Lane's view was that the habitat link function of this area, which was important for the persistence and re-establishment of fauna species in the area, would be compromised by the proposal.

Mr Lane's evidence concurred with that of Mr Kern that this particular project is not a threat to the powerful owl. Instead, species of most concern to Mr Lane included the swamp wallaby, hollow dwelling bird species such as rainbow lorikeets and cockatoos, and other bird species such as the yellow robin which may use the dense understorey for nesting sites. These bird species have a 'flushing distance', when faced with disturbance of 20 to 40 metres. Although Mr Lane conceded the swamp wallaby was not a threatened species, he considered it was a species that was *"nice to have in an urban area"*, and he considered them locally and regionally significant.

Mr Lane recommended the proposal be relocated to an alternate area where the combination of impacts would *“not compromise biodiversity values and habitat links as strategically important as those in the Yarra Valley vegetation corridor”*.

Mr Lane considered that some species such as the swamp wallaby and powerful owl would still be able to use the site at night for hunting, however their desire to do so may be dependent on the existence of other species which may abandon the site due to the high level of human activity during the day.

In considering Mr Lane’s evidence on habitat values, Council submitted the assessment of the habitat value of the area undertaken by Mr Lane was rather confined in that it did not assess potential habitat on the east bank of the river, or north of Banksia Street. It submitted that such areas were in the flushing distance of the birds of interest.

Ms Roberts considered the opening times should be dictated by dawn and dusk (allowing an hour either side) to minimise disturbance on fauna species.

Nine submissions were concerned that native vegetation and habitat removal required for the NELP made the area even more valuable and concerned impacts of the NELP would make the area unsuitable for the proposed use.

(iii) Discussion

The Panel accepts the evidence of Mr Lane and Mr Kern that the activity area is not currently important habitat for the powerful owl. The Panel also accepts the general consensus that there are either no or very few (less than three) hollows currently on site suitable for small fauna (such as powerful owls and parrots).

Mr Gentle’s submission raised the importance of planning for future habitat for the powerful owl by ensuring opportunities for hollows to develop are not curtailed by the proposal. The Panel considers the proposed changes to the TMPP will assist in ensuring the AS are applied appropriately in the circumstances so that hollow creation may be assisted, mitigating the potential impact on future hollows.

The Panel considers the level of human disturbance may cause habitat disturbance to species such as common bird species and the swamp wallaby, which the Panel observed adjacent to the activity area on its site visit. This may impact on habitat connectivity to the extent that the activity area may be avoided during busy times.

The Panel appreciates the intent for the FMP to manage and mitigate potential unknown impacts on fauna, however it considers the current wording of the condition in the Incorporated Document could be improved. The Panel is concerned the FMP is to the satisfaction of the public land manager who did not participate in the Hearing or have the opportunity to comment – this should be resolved in the finalisation of the document.

Secondly, details of the role of the FMP are unclear from the condition. The details provided in Mr Kern’s evidence quoted above are not included in the Flora and Fauna assessment that will become an Incorporated Plan. The FMP should monitor the ‘use’ of the activity area by significant and locally occurring fauna and to do so in a meaningful way, there would need to be an initial period of baseline monitoring to determine current usage of the activity area and its habitat (particularly any hollows). Such baseline monitoring could then confirm aspects such as whether:

- reduced opening hours linked to sunrise and sunset would be of benefit

- hollow dwelling species are deterred from using the site, and if so, whether alternate habitat can be created adjacent to the site as an offset
- there are other human activities which could be managed to reduce impacts – these may be out of the Proponent's control, but may be reported back to the public land manager for consideration.

The Panel has also suggested some minor wording changes to this condition to improve clarity.

In addition to updating the wording of the condition, the Panel considers it would be of benefit for the Flora and Fauna assessment, intended to become an Incorporated Plan, to be updated with further detail as to the intent, role and design of the FMP. Detail provided in Mr Kern's evidence is an appropriate starting point.

If the Responsible Authority chose not to accept the recommendation for baseline fauna monitoring of the site, the Panel considers reducing opening hours to an hour after sunrise, and closing hour to an hour before sunset, a reasonable mitigation measure for potential impacts on wildlife usage of the site.

(iv) Conclusions and recommendations

The Panel concludes:

- The proposal will likely result in reduced habitat use by local fauna species. The extent to which this use will be reduced and can be mitigated is unclear.
- An appropriately executed FMP, including baseline monitoring, will assist in understanding the extent and nature of impacts and informing appropriate management measures.
- The Flora and Fauna assessment should be updated to include detailed design for the FMP.
- Prior to finalising the Incorporated Document, discussions should be had with Parks Victoria to ensure it is the appropriate body to approve the FMP.

The Panel recommends:

Amend the Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan, Yarra Flats TreeTop Adventure Park, Ivanhoe East (Practical Ecology, June 2021) to detail the intent, role and design of the proposed Fauna Management Plan consistent with Mr Kern's evidence.

Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document, as shown in the Panel preferred version in Appendix D, to:

- **Amend the Fauna Management Plan condition to improve wording and include the requirement for a Fauna Management Plan to require baseline and ongoing monitoring**

5.5 Wetland impacts

(i) The issue

The issue is whether the proposal will negatively impact on the potential future ecological values of the Banksia Billabong.

(ii) Evidence and submissions

Fifteen submitters³⁰ were concerned with the potential incompatibility of the proposal with the plans of Melbourne Water to re-water Banksia Billabong and construct wetlands.

Melbourne Water advised that it is currently planning works including construction of a new wetland to treat stormwater from Banksia Street Drain and to provide alternate water for Annulus Billabong and Banksia Street Billabong. The result of these planned works is that the billabongs will likely be inundated *“more often and for longer periods of time”*. The 2013 Concept Plan included upgrade works to Banksia Billabongs and Annulus Billabong including boardwalks and bird hides. The Warringal Conservation Society submitted restoration of the Billabongs and bushland was a worthy goal in its own right which does not need to be linked to commercial operations in the area.

Mr Gentle submitted the billabong used to be *“an incredible wetland paradise, with massive and spectacular birdlife including black swans”*, in his submission the proposal would destroy the opportunity for this ecosystem to be restored.

Submitter 94 identified that the area was significant as part of an ancient wetland system which could, with planned works, become a significant wetland area attracting the return of bird species.

Mr Kern considered that once constructed, these wetlands have the potential to attract a large number of migratory birds protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and various international treaties. He gave evidence that there was *“no direct conflict between the course and rewatering the wetlands but there is the issue of increased noise and activity from people using the carpark and course”*. He considered it likely the ropes course would deter birds from using rewatered billabong habitat over which the ropes course crosses. In his opinion, the majority of the rewatered and constructed wetlands would be distant from the activity area, but would likely be affected by existing urban noises such as traffic noise on Banksia Street and general noises of existing park users and their dogs. To this extent, Mr Kern stated the habitat values of the restored wetlands were already significantly compromised. Measures, such as strategic plantings, could in his view be used to mitigate the impacts of the urban surroundings on the new enhanced wetland habitat.

Mr Kern highlighted the expected benefits of the planned wetlands, including a reduction in weed cover (as native species more used to the ephemeral environment become more dominant) and an increase in frogs and birdlife. Mr Kern conceded the proposed course would affect a small area of this habitat. Referring to light detection and ranging (LiDAR) analysis, Mr Kern gave evidence that the activity area was over the deeper parts of the Billabong which would be less likely to provide migratory bird habitat than the shallower sections where structural plant habitats could grow.

Mr Kern noted that concerns the ropes course was incompatible with the planned wetlands was not shared by the Proponent, Parks Victoria or Melbourne Water.

³⁰ For example, submissions 94 and 112.

(iii) Discussion

It is difficult to assess the potential impact of the proposal on potential habitat to be created by the planned wetlands. It is unclear the type and quantity of habitat to be provided by these wetlands and the species that will be attracted to it.

The Panel accepts submissions and evidence that the proposal is likely to have an impact on the use of the wetland habitat directly under the ropes course. The Panel also accepts that increased visitation would result in further disturbance to the area. However this is to be considered in the context of the existing urban environment which brings with it traffic noise, human presence on pedestrian and bike trails and dogs. If the proposal were not approved, the 'no project' scenario does not involve fencing or quarantining this area of the park from park users, nor should it. The area would remain open to public, as it will if the proposal goes ahead. Access may be increased through the introduction of boardwalks – though it is unclear if these would transverse the activity area or be confined to the shallower wetlands proposed closer to Banksia Street. In any case, the environment could not be described as pristine or secluded.

The Panel takes some comfort in the support of the proposal by Melbourne Water and Parks Victoria. Melbourne Water's submission noted the original proposal was for the course to be smaller and located further south. Whilst support is maintained, Melbourne Water recommended conditions aimed at ensuring the Proponent appreciated and managed the increased risk of inundation for the site. These are discussed in Chapter 7.3.

The Panel considers once the wetland works have been completed and habitat benefits are realised, Melbourne Water and the public land manager may consider the level of additional habitat disturbance from the use is no longer desirable. At this stage, a strategic decision may be made requiring changes to the use or removal of the course. The temporary nature of the structures means they are readily removable and the lease means the proposal could cease in future if no longer considered appropriate for these reasons. This is not however something the Panel can conclude based on the evidence before it.

(iv) Conclusions

The Panel concludes:

- The proposal will result in additional disturbance of the wetland habitat area directly below the ropes course and in some adjacent areas.
- This disturbance may reduce the utilisation of the area by potential future inhabitants including migratory bird species.
- The extent and consequence of this impact is unknown as the success of the planned wetlands in providing suitable habitat for such bird species is unknown.
- In the context of existing disturbances the cumulative impact is likely to be marginal. However, if considered greater at the time, there are readily available mechanisms for the use to be changed or removed.

5.6 Ecological value

(i) The issue

The issue is whether the proposal will result in a net gain for the environment in the area consistent with the relevant Yarra protection principle.

(ii) Relevant legislation

The YRP Act includes the following environmental principle:

There should be a net gain for the environment in the area of Yarra River land arising out of any individual action or policy that has an environmental impact on Yarra River land.

(iii) Evidence and submissions

The RCSH strenuously submitted the proposal would result in a net loss for the environment in this area.

Parks Victoria submitted the proposed use was consistent with the purpose of the zone to provide public education and interpretation of the natural environment with minimal degradation of the natural environment or processes. Parks Victoria stated the lease would include requirements for weed removal and restoration to improve the significantly modified vegetation.

The Proponent submitted the site location was appropriate as it had not otherwise been identified for conservation or protection in the draft YSP and was not identified as a 'no go zone' for the NELP. It stated that potential impacts needed to be put into perspective. The Proponent submitted the main potential impact of daytime noise disturbance on habitat values needed to be considered in the context of the surrounding area being a heavily urbanised section of the Yarra Corridor. This minor impact needed to be balanced with the overall benefit to be achieved from proposed land management and restoration works.

The RCSH submitted the project was not the only solution to gain the benefits of much-needed regeneration works required in this area of the park. The RCSH outlined its role in regeneration activities in other sections of the park, including the availability of funding from the likes of Melbourne Water and DELWP. It gave a recent example of spending a \$16,000 Commonwealth Government grant on regeneration works in the Yarra Flats park and submitted the reason works had not yet commenced in the activity area was the uncertainty surrounding future works in the area.

(iv) Discussion

Given the YRP Act is a relatively new legislative framework and much of the supporting and implementing policy documents are in development, there is currently limited assistance available in understanding how to apply the Yarra protection principles. As discussed in Chapter 3, the Panel considers the consistency of the proposal with the Yarra protection principles is a relevant (but not overriding) consideration for the assessment of the proposal. That is, the Panel does not consider the legislative framework establishes a threshold test that a proposal must achieve a net gain. To this extent, the Panel has considered in Table 3 whether the proposal will achieve an environmental net gain. All potential impacts have been considered in a local or regional environmental context. That is, there has been no evidence to establish this project will result in negative environmental impacts of a State level of significance (such as significant loss of vegetation or loss of habitat for a significant protected species). Accepting that the exercise undertaken in Table 3 is somewhat subjective, comments have been provided explain the Panel's rationale.

Table 3 **Assessment of environmental net gain**

Environmental impacts	Loss or gain	Extent and likelihood	Panel comment
Native vegetation	Loss offset to achieve a net gain	Minor/Certain	<p>The proposal will result in a loss of vegetation calculated as less than 0.5 hectares</p> <p>The Panel notes the native vegetation to be removed (or lopped) will be offset in accordance with the Guidelines to achieve a net gain. Factoring in this policy, the loss of native vegetation could be considered policy neutral, nevertheless the Panel considers this a loss</p>
Trees	Loss	Minor/Certain	No trees will be removed. Some canopy (limited to a maximum of 15% of total canopy) on a small number of trees will be removed
Fauna habitat	Loss	Minor-medium/Likely	The extent of this impact is unclear as there was no baseline data on the usage of the site by fauna species or a comprehensive analysis of the likely level of impact from the proposed ropes course
Wetland habitat	Loss	Minor-medium/Likely	<p>The extent to which the planned wetlands will act as a drawcard for migratory bird species, frogs and other wildlife is unclear but it will likely have a positive impact.</p> <p>The ropes course will result in additional habitat disturbance of the area which may reduce the utilisation of the area directly below the ropes course and/or some areas adjacent to it.</p> <p>There are existing sources of disturbances which may be able to be screened to an extent in the design of the wetlands</p>
Weed reduction and revegetation	Gain	Minor/Certain	Considered negligible gain overall. The potential benefit from improved land management practices must be balanced with the likelihood that such works may be undertaken by local environment groups with government grants or as part of the planned rewatering of the wetlands by Melbourne Water
Overall assessment			The proposal will likely not achieve a net gain for the environment

From the above, the Panel does not consider the proposal will achieve a net gain for the environment. The Panel has had regard to this in considering the strategic justification for the proposal in Chapter 3.

(v) Conclusions

The Panel concludes:

- The proposal will likely not achieve a net gain for the environment, but based on the emerging legislative and policy framework under the YRP Act this is not a threshold test that must be met for the proposal to proceed.

6 Traffic and parking

(i) The issue

The issue is whether the proposal will result in unacceptable traffic and parking outcomes.

(ii) Evidence and submissions

Forty-three submissions raised concerns about the impacts of the proposal on traffic and carparking including:

- traffic impacts on The Boulevard and surrounding streets including vehicle 'rat running' to avoid busy intersections
- environmental and amenity impacts associated with increased traffic
- current park parking usage doesn't account for COVID-19 impacts
- potential overspill of parking into The Boulevard
- the need for bicycle parking and associated facilities.

Ms Curry was concerned The Boulevard/Banksia Street intersection did not have the capacity to cope with additional pedestrian and traffic movements in the context of existing congestion and the future impacts of the NELP. She considered that vehicles would use local streets including The Boulevard (to the south) and Glenard Drive when leaving the site.

The RCSH considered that the traffic assessment was inadequate and did not account for traffic taking the shortest and quickest route using nearby residential streets including The Boulevard rather than Banksia Street and enduring the associated traffic light signal delays.

The YPPA submitted that increased traffic activity in The Boulevard could damage the road and affect its low speed shared use function.

Ms Roberts did not support the expansion of existing carparking areas to accommodate the use of buses. Her submission was supported with suggested Incorporated Document or lease requirements including limiting parking to existing paved areas, limiting arrangements for bus parking (by size and time), limiting access to car parking areas (by land managers or during community events) or closure of parking areas where directed.

The Proponent relied on the traffic evidence of Ross Hill of onemilegrid with regard traffic and parking issues and supported Council's identification of a Green Travel Plan requirement in the Day 1 Hearing version of the Incorporated Document.

Mr Hill's evidence included an assessment of:

- car parking demand required by the development (based on maximum course capacity numbers, staff numbers and patron transition)
- the adequacy of carparking along the park access road, taking into account Clause 52.06 parking requirements, multi-purpose trips and accessibility to public transport, pedestrian and cycling networks and the observations of similar facilities
- traffic volumes generated by the proposal and their impact on the operation of The Boulevard and The Boulevard/Banksia Street intersection.

In relation to carparking, Mr Hill gave evidence that up to 37 carparking spaces were required when all the treetop adventure courses were operating at capacity. He said these could be readily accommodated within the existing 53 bay area to the west of the toilet block and the 40 bay area

at the eastern end of the access road which is currently closed off and is to be re-opened for the facility. His evidence identified that both these areas currently experienced low occupancy levels even during peak times and that plenty of capacity would remain for other park users.

Mr Hill identified that some users would access the site by private bus, public transport and well established pedestrian and cycle path networks. As a consequence, he recommended that at least five bicycle parking spaces be provided and monitored and a bus parking and drop off/pick up area be provided, preferably within the eastern parking area adjacent to the administration area. Mr Hill supported Council's recommendation for a Green Travel Plan and acknowledged this would include designated on-site bicycle provision.

Mr Hill's traffic impact analysis considered that most traffic would access and leave the site from The Boulevard/Banksia Street intersection with the impacts on that intersection during peak times being negligible. He concluded that the existing road network *"is expected to easily accommodate the additional traffic generated by the proposed use"*.

In response to cross-examination from Ms Roberts, Mr Hill considered that the width of the current access road supported a low speed, shared use function which would not be impacted by the proposal, and that bus movement could be accommodated without further widening. He identified that usage surveys had been undertaken outside COVID-19 lockdown periods, and that the proposal would not impact on the capacity of the existing parking areas to accommodate future park enhancements as identified in the 2013 Concept Plan.

Council supported the evidence of Mr Hill, identifying that it accorded with Council's own assessment of traffic and parking impacts. It proposed to alter condition 6.23 of the Day 1 Hearing version of the Incorporated Document to simplify it and extend it to include line marking for bus parking in addition to the Green Travel Plan requirement.

(iii) Discussion

The Panel notes the submitters' concerns about traffic and parking. It observed the poor condition of The Boulevard to the south of the park entry road, and cars parked along The Boulevard (even when the carparks were almost empty). While some patrons may choose to use public transport (train or buses) as a means of travel to the venue, and despite the site being well served by pedestrian and regional bicycle paths, it is likely that most users will access it by vehicle.

The Panel has relied on the traffic and parking analysis undertaken in support of the application and the evidence of Mr Hill. The Panel accepts that the majority of traffic entering and leaving the park will use The Boulevard/Banksia Street intersection and that the traffic generated by the proposal will be negligible in the context of local traffic activity and intersection capacity.

In the event that patron travel behaviour results in a noticeable increase in traffic through the local street network or parking on the side of The Boulevard (which is already occurring) Council is in the position to implement appropriate traffic management responses as necessary.

The Panel accepts the evidence of Mr Hill that the car parking needs can be accommodated within the two most easterly carparking areas with minimal enhancement other than line marking or minor signage. Sufficient carparking capacity remains in other parking areas along the park access road to accommodate existing and future park users and other identified park enhancements. The Panel agrees with Mr Hill that many patrons may choose to access the venue by bike or by small buses and that provision should be made to accommodate bicycle and bus parking.

The Panel accepts the views of Council and the Proponent that the additional requirement for a Green Travel Plan can accommodate bicycle parking provision, however considers that as currently worded the Incorporated Document does not require provision or broader implementation of a Parking Plan. Similarly, the amended condition 6.23 does not require the provision of a plan to show where the parking and bus parking areas are. The Transport Impact Assessment does not serve this function either. While a level of flexibility is supported and parking areas on public land should not be provided for exclusive use, further guidance is required to support the intent.

While the Panel acknowledges the efforts of Ms Roberts to identify a set of comprehensive conditions, in this instance it does not consider there is any basis for restrictive requirements relating to bus numbers and sizes, parking timing and bus engine running times or closing off parking areas during particular circumstances. It is also unable to direct Parks Victoria to include particular conditions on any lease issued. The Amendment does not inhibit the ongoing land manager roles of Council and Parks Victoria (or Melbourne Water during flood events) to continue to manage the parkland in a manner which ensures it is safe and usable for a range of activities and users. It is not therefore necessary that all conceivable aspects of the use and development are managed under the conditions of the SCO and/or the Incorporated Document.

The Panel has identified suggested changes relating to car, bus and bicycle parking in the Panel preferred version of the Incorporated document contained in Appendix D (which is based on the Council's Final Incorporated Document).

(iv) Conclusions and recommendations

The Panel concludes:

- The proposal will have negligible impact on traffic activity, the traffic network or on the availability of carparking in the park.
- The Incorporated Document should be amended to provide greater direction for the provision and management of car, bus and bicycle parking.

The Panel recommends:

Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document, as shown in the Panel preferred version in Appendix D, to:

- **Amend the Car Parking / Access conditions, including a requirement to provide a Parking Plan.**

7 Other issues

7.1 Extent of the SCO

(i) The issue

The issue is whether the SCO and Incorporated Document should apply to just the Treetop Activity Area.

(ii) Submissions

Nine submissions raised concerns that the area affected by the SCO¹ was larger than the area required for the conduct of the Treetop Activity Area. These submissions questioned the motives of this and considered that it could lead to an extension of the operation or allow other activities or more signage.

Ms Curry submitted that the area covered by the Amendment and shown in the Incorporated Document was excessive, could result in intrusive signage and should be reduced to align with the Treetop Activity Area and access road and carparking areas. The Friends of Banyule made a similar submission.

In closing, the Proponent identified that the additional land merely facilitates signage in accordance with the Preliminary Signage Strategy and development outside the Treetop Activity Area would not be authorised under the Incorporated Document.

Council's proposed Final Incorporated Document included additional distinction between the 'Subject Site' and the 'Treetop Activity Area'. Council and the Proponent supported the mapped extent of the SCO and identified that the Incorporated Document explicitly restricted the activity to the identified Treetop Activity Area.

(iii) Discussion

The Panel acknowledges that the SCO is proposed to be applied to an area much larger than the activity area. This is in part because the proposal relies on other parts of the park to access the site, provide parking and accommodate locational and directional signage. Pragmatically it is also the preferred approach to use existing land parcel boundaries or natural or physical features for establishing Zone or Overlay boundaries.

The Panel supports the application of the SCO as proposed as it applies appropriate mapping practice. More importantly, with the further changes proposed by Council, the Incorporated Document limits what can be permitted under the SCO (outside what can normally be applied for or considered under the PCRZ) to the Treetop Activity Area. The introduction of new uses and development or the extension of the use outside the Treetop Activity Area would require a further planning scheme amendment.

(iv) Conclusions and recommendation

The Panel concludes:

- The extent of the SCO is appropriate
- The Incorporated Document should be amended as proposed by Council to clarify its application to the Treetop Activity Area.

The Panel recommends:

Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document, as shown in the Panel preferred version in Appendix D, to:

- **Distinguish between the ‘Subject Land’ and ‘Treetop Activity Area’.**

7.2 Signage

(i) The issue

The issue is whether the proposed signage is excessive.

(ii) Background

The Proponent’s Preliminary Signage Strategy is proposed to be identified as an Incorporated Plan. It sets out the number, design, dimensions and materials of the proposed signage as summarised in Table 4.

Table 4 Proposed signage

Sign	Location, size and number
Business identification sign	1 sign at entrance to Yarra Flats Park (1.32 square metres) featuring business name, logo and distance to facility
Main direction signs	2 signs containing ‘TreeTops’ and directional arrow (each 2.97 square metres) located before the Yarra Trail crossing and one near the main carpark
Business information sign	1 sign located adjacent to eastern carpark containing information about hours of operation and location of carpark (0.36 square metres)
Smaller direction sign	1 sign containing ‘TreeTops’ and directional arrow (approximately 0.3 square metres in area) located within eastern carpark area
Administrative signs	Admission and conditions of participation sign (freestanding or mounted on administration building – numbers and dimensions not identified), exit direction signs (5 in total) mounted on timber posts to a height of 1.5 metres (0.1 square metres each) and toilet directions signs (2 in total) mounted on timber posts to a height of 1.5 metres (0.16 square metres each)
Course and safety signs	Course direction signs (one sign per course) mounted on timber posts to a height of 1.5 metres (no dimensions identified) Safety signs restricting access to certain locations (0.05 square metres each) – numbers not specified
Other signs	1 post mounted parent/carer message sign for children’s course (0.12 square metres) and 1 rubbish bin information sign (0.06 square metres) and unspecified number and dimensioned interpretive signs

(iii) Submissions

Ms Roberts was concerned about the proposed level of signage and the possibility of more extensive signage being applied for later, given what she identified as a level of flexibility included

in the Incorporated Document. Her suggested changes to the Incorporated Document if the Amendment was approved included not allowing signage in the park between the park entrance and the car parks and Banksia Street (other than bus parking signage or essential safety or amenity signs) and providing limits on those signs including dimensions, colours and font. Prohibition of projected or illuminated signs and other advertising or promotion devices such as kites or balloons was also suggested.

Ms Curry considered that the signage proposed was excessive and could be managed by other mechanisms such as Council's Local Laws or use VicRoads standards or apply Parks Victoria signage forms. She was also concerned about further potential business identification signage once the use was established.

The YPPA made a similar submission, considering the *"large commercial advertising signs will detract from the community's enjoyment of the tranquillity of the park"*.

The Proponent submitted that a number of the proposed signs were exempt from the need for a planning permit under Clauses 52.05-10 or 52.05-14 (including directional signage or tourist attraction guidance in a road reserve), while Business identification signs should be considered. The Proponent considered that the Preliminary Signage Strategy was the appropriate mechanism to manage signage and that what was proposed was consistent with what was permitted in the PCRZ.

Council considered that the signage proposed was relatively discrete and low key and properly managed through the Incorporated Document. While unable to say whether the signage area proposed was consistent with the signage limitations for the PCRZ it considered them appropriate for the Zone.

(iv) Discussion

While the purpose of the SCO is to allow an Incorporated Document to allow development otherwise prohibited or restricted, including signage provision, the Panel considers that the signage proposal as set out in the Preliminary Signage Strategy is appropriate. The signage proposal is a relatively measured, low key response and at the lower end of what might be expected for a commercial operation of this type. The signage design is fairly discrete providing basic way finding information and necessary operational signage and user guidance. Other than the safety signs which are brighter, the signs are unobtrusive.

The Panel considers that the one business identification sign near the park entry is acceptable and is appropriately scaled to be visible but not dominant of its park setting. The Panel acknowledges that some of the directional and operational signs do not require a planning permit however given the landscape and environmental setting of the course and limited park signage a level of control is necessary. The proposed approach to manage signage holistically through a Signage Strategy provides for a more considered approach to signage design and rationalisation rather than considering individual signage applications. The Panel considers that overall, the signage concept is consistent with the decision guidelines of Clause 52.05 and the PCRZ.

The Panel appreciates submitter concerns for further business identification signage once the facility is established. Submitters also identified some of the bolder and more colourful imagery located on structures at similar facilities operated by the Proponent as examples of potential signage that might be more visually intrusive. However the Incorporated Document limits signage

to that shown in the Preliminary Signage Strategy along with other conditions prohibiting illuminated or flashing signage.

The Preliminary Signage Strategy does have some limitations. For example, details for some signs are not specified (such as the details of their mounting particularly where supported by posts and whether some signs are affixed to the administration building) or their location and installation within TPZs. This is not surprising given the Preliminary Signage Strategy predated many of the expert reports or updated plans.

Where possible the administration signs (admission and conditions of participation signs) should be located on the administration office building rather than freestanding given this is the key focal point for users and will minimise the visual impact of signs. The Panel considers that the Preliminary Signage Strategy should be updated (as a final Signage Strategy) along with the related conditions of the Incorporated Document. This would also enable Council (with Parks Victoria) to have some greater control over the location of any signage that the current condition does not.

(v) Conclusions and recommendations

The Panel concludes:

- The Incorporated Document, through the Preliminary Signage Strategy, provides for an appropriate signage outcome for the subject land.
- The Preliminary Signage Strategy should be amended to finalise signage details including location and how signage will be managed within TPZs with a related change to the Signage conditions of the Incorporate document.

The Panel recommends:

Amend the Preliminary Signage Strategy TreeTops at Yarra Flats by TreeTops, June 2017 Incorporated Plan to:

- a) **Confirm the number, dimensions and locations of all signs including details of supporting posts**
- b) **Identify how signage will be managed within Tree Protection Zone areas.**

Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document, as shown in the Panel preferred version in Appendix D, to:

- **Amend Clauses 5.0 and 6.0 to refer to an updated Signage Strategy.**

7.3 Flooding and drainage

(i) The issue

The issue is whether the proposal appropriately responds to the impacts of flooding and stormwater drainage.

(ii) Submissions

Ms Curry submitted that the site was prone to flash flooding and consequently a risk for participants and observers that a flood management plan was required.

The Friends of Banyule submission included photos and a video taken by Ms Giovas that showed Yarra River flood waters overtopping the bank and filling Banksia Billabong during a flood event in June 2021. The submissions of Mr Gentle, the RCSH and the Warringal Conservation Society

provided images of this flooding event. RCSH's submission included aerial images overlain with topographical data to show flooding event extents and a diagram showing the trees still under water after the June event. The submission was supplemented by flood depth and extent mapping images included in the evidence of Mr Kern and based on Melbourne Water modelling data.

The Friends of Banyule suggested 'without prejudice' changes to the Incorporated Document including changes to ensure Melbourne Water's conditions did not impact on the natural filling and discharge cycles of the Banksia Billabong and qualified that the shipping container structures would be subject to frequent and significant inundation.

Ms Roberts suggested 'without prejudice' changes to the Incorporated Document relating to the management of stormwater from the administration building roof or any tanks and the use of water gardens rather than directing stormwater to the river or billabong. It was suggested that the site operations should close during flood events and a lease should not be issued until overland flows were reduced.

Melbourne Water supported the Amendment noting that the site was subject to significant flooding during 1 per cent AEP storm events and inundation during more frequent storm events as well as its stormwater billabong program. The submission observed that new wetland works proposed for the Annulus and Banksia Street Billabongs (discussed in Chapter 5.5) would result in the billabongs being inundated more often and for longer. In relation to the ropes course this meant:

... that the ground underneath the ropes course may be inundated for long periods of time. This may impact on the operation of the ropes course, for example through increased odour, lack of access at ground level and increased insect populations.

Melbourne Water recommended the inclusion of additional conditions:

- provision of a flood management plan and details relating to cut and fill
- the Proponent to enter into an agreement with Melbourne Water and Parks Victoria to provide for:
 - disclosure of the likely future inundation to the ropes course area
 - agreement on the management regime of the ropes course/billabong area including the timing, frequency and notice period regarding Melbourne Water's release of flow into the billabongs
 - agreement on access arrangements for the billabong areas
- the shipping containers to be used only for the temporary storage of equipment necessary for the functioning of the ropes course, noting that they will be subject to frequent and significant inundation.

The Proponent confirmed that the cut off drains referred to in the original proposal were no longer required as a result of changes to the building structure design and location. The Proponent further submitted that:

... it is reasonable to accept that the proposal should be closed when the river is approaching the minor flood level or is spilling into the billabong. The details as to this can be resolved in the flood management plan process. If the boom gates to Yarra Flats are closed, the use will not be able to operate anyway. However, if the panel were to recommend that the use cease when the river was spilling into the billabong, or if the river flood level was above 5m and rising, such a recommendation would not be opposed by the proponent.

The Proponent identified that once the river peaks and flood water velocities have subsided and the risk of flooding had subsided to an acceptable level, the proposal could re-open, even if there is water still in the billabongs. It submitted that after heavy rain or a flood event, *“where there remains water under a tree, for any given period, it should still be possible to safely operate the course”* depending on platform heights. The Proponent noted that:

- the tree course has been designed to sit around the edge of the billabong
- the trees used for the red and black courses that traverse the billabong are at greater height (between 8-12 metres above the ground level) and will have higher platforms than other trees
- longer courses will be constructed as zip lines resulting in limited climbing or traversing above temporarily inundated areas
- the end of each course will be beyond the edge of the billabong, on higher ground, to ensure manageable egress
- if conditions were such that egress was adversely affected, the course would close until the waters had receded
- the preparation of a Flood Management Plan enabled this level of detail to be resolved
- there was no evidence that would indicate that any stormwater flows from urban drainage into the Banksia Billabong would warrant temporary closure.

In relation to flooding impacts Council was largely reliant on the submission of Melbourne Water. Council included Melbourne Water’s conditions in the Day 1 Hearing version but proposed further changes in its Final Incorporated Document version to delete references to cut and fill which was not proposed and to qualify that the use of the shipping containers *“be used for administration and the temporary storage of equipment and administration as reasonably necessary for the operation of the ropes course”*.

(iii) Discussion

No party disputed that the subject land including the activity area is subject to inundation from periodic flooding. Its inclusion in the LSIO requires an application for development to be referred to the floodplain management authority, Melbourne Water in this instance. It is also the authority that determines arrangements for stormwater discharge to its drains or to watercourses.

The proposal has been conditionally supported by Melbourne Water. The Panel considers that, in the main, the conditions sought by Melbourne Water (as amended by Council in its Final Incorporated Document) are appropriate. The concentration of the public in an area that does flood and will flood during a range of storm events requires appropriate management. The requirement for a Flood Management Plan is important and will guide how the site will be managed during flood events so as not to impede the movement of flood waters. It is unclear however, whether it will deal with public risk or closure of the facility during flood events. The Panel notes that the OMP document provided by the Proponent indicates that the Flood Management Plan will set out trigger points for flood evacuation, protective actions and post flood actions.

The Panel considers there would be value in a condition being included which provides for the closure of the facility during flood events. The Panel notes that the Proponent, while indicating it would accept such a condition, has not nominated one. The logical place for such a condition is under the Melbourne Water conditions heading. The Panel is reluctant, however, to nominate a set of words or set an arbitrary event level and attribute them to an agency that has not made a

submission to the Panel on its drafting. This should be discussed and drafted in consultation with Melbourne Water.

The Proponent confirmed there will be no cut and fill works undertaken as part of the proposal. This is consistent with the Works condition. The value or utility of the Melbourne Water conditions relating to earthworks, fencing and stairs is unclear in the context of the proposal and other conditions and it is suggested that Council should clarify these conditions with Melbourne Water.

(iv) Conclusions and recommendation

The Panel concludes:

- The Amendment appropriately responds to the impacts of flooding and stormwater drainage, consistent with the objective of Clause 12.03-1R and with the Melbourne Water conditions in the Incorporated Document with the changes identified in Council's Final Incorporated Document.
- The Incorporated Document should be further amended to include a condition regarding the closure of the course under particular flood conditions and this should be drafted in consultation with Melbourne Water.
- Council should review and clarify the wording of Melbourne Water's conditions including those relating to earthworks, fencing and stairs, with Melbourne Water.

The Panel recommends:

Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document, as shown in the Panel preferred version in Appendix D, to:

- **Include a condition regarding the closure of the adventure course under particular flood conditions, to be drafted in consultation with Melbourne Water.**
- **Amend the Melbourne Water conditions following further discussions with Melbourne Water to review and clarify proposed conditions including those relating to earthworks, fencing and stairs.**

7.4 Public safety

(i) The issue

The issue is whether the Amendment will create public safety issues requiring management in the Incorporated Document.

(ii) Evidence and submissions

The submissions of RCSH and Dr Cary identified the potential safety impacts associated with limb drop and tree failure.

Ms Curry submitted that an evacuation plan was required in the event of flooding. She also submitted an engineer would need to review the subject trees to ensure they were suitable for the proposed purpose and would not fail under the weight pressure of the course structures.

Ms Robert's without prejudice Incorporated Document suggestions included the requirement for the consideration of emergency situations including closure and evacuation in the event of a flood or bushfire threat and for the provision of an Anaphylaxis Management Plan and General First Aid Plan.

Submitter 155 was concerned that Occupational Health and Safety issues might result in the park area being closed off for wider park users while Submitter 168 raised issues regarding safety during construction and daily operations.

The Friends of Banyule provided without prejudice changes to the Council's Final Incorporated Document including:

- requiring the Site Safety Management Plan to meet relevant Australian Standards
- requiring an Emergency Evacuation Plan and plans showing the location of alarm systems and fuel and chemical storage locations
- engineering drawings to demonstrate tree trunks and branches utilised could support equipment and course participants.

Mr Kern's evidence suggested that the risk of limb drop was not a major hazard issue in the activity area due to the generally young age of the trees.

The Proponent submitted that safety management was already a core part of its operations, providing a copy of its OMP which set out its provision of Standard Operating Procedures and a Site Specific Safety Management Plan which deal with course inspections, risk management, first aid, health and safety training, incident reporting and responses to extreme weather events, extreme fire danger warnings as well as flood warnings.

Council and the Proponent noted that the Day 1 Hearing version of the Incorporated Document included a condition at 6.2 for a Safety Management Plan to address risk management, customer training and team member training for safety and emergency management. Council's Final Incorporated Document proposed to narrow the approval of the Safety Management Plan to just Parks Victoria.

(iii) Discussion

There is an inherent risk in participating in activities such as a ropes adventure course. The issues of patron and public safety, while an important consideration for the operator and land manager, are largely operational matters rather than planning considerations.

That said, the Panel is confident that the Proponent is fully appreciative of its obligations under other legislation as set out in its OMP document. These are potentially practices that Parks Victoria as the public land manager will also expect to see addressed as part of its lease requirements including evacuation or course closure during extreme conditions.

The Panel considers that the proposal to include a requirement for a Safety Management Plan (as amended by Council) is reasonable and will also enable an opportunity to align the emergency management elements of the condition with the Panel's recommended augmenting of the Melbourne Water conditions discussed above. It is unnecessary to identify that a Safety Management Plan must meet a particular Australian Standard.

The Panel considers the Incorporated Document appropriately manages the risk to users from potential bushfire by requiring the facility to close during extreme risk days. Further, the Incorporated Document prevents the use of fires associated with the ropes course, thereby reducing any bushfire hazard consistent with Clause 13.02-1S.

The Panel does not consider there is a need for an engineering report in relation to tree structure and capacity. This is a matter for course management (and tree resting if required) and the monitoring of tree health using the services of an arborist. There was no indication from the

proponent that the administration building would house or need to house fuel or chemicals on site.

(iv) Conclusions

The Panel concludes:

- The condition requiring the preparation of a Safety Management Plan is appropriate (as modified by Council in its Day 1 hearing version of the Incorporated Document).
- The Incorporated Document does not require additional conditions relating to safety, emergency evacuation, first aid, alarm systems or chemical storage.

7.5 Amenity and landscape character

(i) The issue

The issue is whether the proposal will result in a significant negative impact on the landscape character and amenity of the park and adjoining areas for its users and local residents.

(ii) Evidence and submissions

Thirty-five submissions raised concerns around the potential amenity impacts associated with the proposal. These impacts ranged from additional traffic, noise from patrons, the impacts of lighting and litter to the intrusive visual appearance of the operation. The submissions were concerned that these factors would negatively impact the amenity of nearby homes and the public amenity of the park for its users, including its tranquillity and ambiance and its semi-rural and natural character and mental wellbeing value as a quiet, reflective and passive area. These concerns supported by the Yarra Riverkeeper Association, YPPA, Mr Gentle, Ms Curry and Ms Roberts. Ms Williams and Mr Young also noted that the landscape character of the area was an important aspect of what made it a focus of the Heidelberg School of Artists.

RCSH explored the issue of social impacts further. It identified that the Yarra Flats parklands provided a peaceful setting to escape to and passively recreate which was enhanced by the restorative works undertaken by volunteer groups and the rewatering of the billabongs. It submitted that these values were important for psychological wellbeing, and were threatened by the proposal. Mr Lees (for RCSH) considered the amenity impact from the proposal was inconsistent with the 'social principle' of the YRP Act that:

The existing amenity of Yarra River land, including its natural features, character and appearance, should be protected and enhanced for the benefit of the whole community.

The YPPA made a similar submission, considering the proposal would affect the community being able to enjoy the park for years to come.

Parks Victoria acknowledged the physical and mental health benefits of time spent in nature and identified this was a key component of Healthy Parks Healthy People.

Several submissions³¹ considered that the proposal was likely to attract undesirable behaviour and anti-social behaviour requiring security and policing.

³¹ Including submissions 41, 42, 45

Ms Roberts submitted that the proposal was “*an anathema*” to the values of the parkland enjoyed by the community and would be a visually intrusive element no matter how lightly resting it was. She considered that the structures proposed would disturb the park’s viewlines and experience.

Ms Roberts’ without prejudice changes to the Incorporated Document suggested a number of changes to address amenity concerns including:

- hours of operation (between one hour after sunrise and one hour before dusk)
- limiting site activities to just the Treetops course (no parties, dancing, music, face painting for example)
- restricting access to over 12 years old and restricting access of observers
- non-operation on at least 5 days a year
- the form and finishes of structures (including drainage)
- the provision of rubbish bins, cleaning of graffiti, no permanent fencing
- access to the site for study, observation or carrying out restoration works by nominated agencies and groups.

The Friends of Banyule submitted that if the Amendment were to be supported the Incorporated Document should include a condition for a waste management plan and the course not opening for one to two days per week.

Mr Glossop considered the scale of buildings minimal in their size and impact on the landscape.

Council identified that the proposed operation was in a northern position of the park near other noise sources and was not a tranquil location like other parts of the park. Nor was the area pristine or identified as a conservation area. It considered the proposal a light touch both in the manner in which the ropes, wires and platforms were affixed but also visually and submitted it would not materially change the landscape. Both Council and the Proponent identified that the Incorporated Document included conditions relating to hours of operation, sound amplification, lighting and rubbish bins which were appropriate and did not require further change.

Council’s Final Incorporated Document included a condition 6.2(l) requiring the shipping containers to be clad in timber consistent with the Proponent’s submitted images. It also proposed to delete the general amenity condition, remove reference to State Environment Protection Policy N1 (Control of Noise from Commerce Industry and Trade) and State Environment Protection Policies N2 (Control of Music Noise from Public Premises) and related Residential Noise Regulations and EPA Guidelines as they weren’t relevant to the proposal. These changes were also generally recommended in the evidence of Mr Glossop, who considered them standard amenity conditions relating to commercial development. He considered the outdoor lighting condition was not required because none was proposed. He considered that the hours of operation condition required a starting time, and suggested 9:00am.

(iii) Discussion

The Panel acknowledges the landscape qualities of the Yarra Flats parklands. It is set within a flood plain and located some distance from the more established urban areas. At its northern end it includes extensive vegetated areas, pockets of open areas, billabongs, the Yarra River and formal and informal walking tracks through these landscapes. The area is largely free of structures and hard surfaces with the exception of the toilet block, barbeque shelter and entrance road and parking areas near the subject land. The location of new structures within such an environment is

likely to result in them being visible to some degree and this is an aspect of the proposal that requires consideration and management.

The Panel is satisfied that the proposed timber clad shipping containers (as confirmed at the Hearing) set on a raised platform with a simple roof form structures is an appropriate low key response to its setting and one which reinforces that these structures may be easily removed and minimises their visual impact. While visible, they will be close to the eastern carpark and have a vegetative backdrop and are likely to be perceived as low key in the landscape. Similarly, the ropes and wire course elements will be visible from nearby, but the proposed treatments are sensitive and sympathetic to the landscape setting and will not be overly appreciable from other areas of the park or likely to impact upon the landscape viewlines. The location of the structures near an area that already hosts other structures and hard stand areas means that its setting is less pristine than other areas of the park.

The Panel supports the additional condition proposed by Council that requires the shipping containers to be timber clad. The Panel agrees with Ms Roberts that some aspects of the administration area structure are unresolved and suggests other materiality aspects should be considered. This was discussed in Chapter 4.2 with recommendations identified relating to material finishes of structures in response to the park's heritage values.

The Panel also acknowledges that this section of Yarra Flats park is used for passive activities although it is connected to the wider regional park network through bicycle and walking trails. The importance of tranquil and peaceful natural locations for relaxation and reflection is acknowledged as important to mental health and wellbeing.

However, the proposed use must be considered in its broader context. Yarra Flats is a large park and used by a wide range of users for a range of passive and active activities. It is part of a larger park network serving both local and regional open space roles. The activity area is also located to the northern part of the park close to other commercial and industrial activities and noise sources including noticeable background traffic noise, and where the park's amenities are located (toilets, car parks, shelters and barbecues). In this context, the issue of noise is not considered so significant as to impact the community's enjoyment of the park by its passive users.

The Panel does not agree with some submitters that the use will attract undesirables and require security. There is nothing to substantiate this assertion. The Council report alluded that there were some issues currently experienced in this area of the park. If anything, the operation is likely to introduce more activity and passive surveillance of the area.

The Panel considers that the proposed amenity conditions of the Incorporated Document relating to lighting, bins, noise and hours of operation (including Council's proposed changes) will assist in ameliorating any adverse amenity impacts associated with the proposal on both park users and nearby residents. The Panel considers that the lighting and hours of operation conditions should be amended. In relation to lighting it is suggested that the extent of outdoor lighting should be limited as far as practicable, and all lighting should be turned off after hours.

The Panel agrees with Mr Glossop that the starting time should be set at 9:00am. It considers the proposed hours provide an appropriate balance between the financial needs of the operator and other park users and allow an appropriate level of 'down time'.

The Panel does not support applying an arbitrary requirement that the facility not operate one or more days a week or month. There is no basis for this when the use of the park itself is largely unrestricted or particular evidence to indicate that this would provide some wider benefit.

(iv) Conclusions and recommendation

The Panel concludes:

- The proposal will not result in a significant negative impact on the landscape character or the amenity of the park and adjoining areas for its users and local residents.
- The proposal is consistent with the objective of Clause 12.03-1R.
- The Incorporated Document should be amended broadly consistent with Council's Final Incorporated Document subject to the Panel's suggested refinements relating to the finishes of the administration area structure (as discussed in Chapter 2.4).

The Panel recommends:

Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document, as shown in the Panel preferred version in Appendix D, to:

- **Amend the Amenity and Hours of Operation conditions to include a range of minor changes to ensure document consistency and clarity.**

7.6 The roles of Parks Victoria and Council

(i) The issue

The issue is whether Council and Parks Victoria have appropriately discharged their responsibilities as public land manager and planning authority.

(ii) Submissions

Thirty-four submissions raised concerns about the role played by Parks Victoria in supporting the proposal. Submitters were concerned Parks Victoria was abrogating its responsibilities to protect and preserve the park in favour of commercial interests. Submitters questioned Parks Victoria's reliance on the 2013 Concept Plan for its Expression of Interest Process which some submissions considered did not reflect the wider community view and was now outdated. The Friends of Banyule suggested that the Incorporated Document should set out the responsibilities of Parks Victoria at Clause 5.0.

Twenty-two submissions raised concerns about the role played by Council in the Amendment including that it has been impartial, putting potential income and commercial interests ahead of environmental issues and the local community.

Parks Victoria submitted that its consideration and support for this matter was guided by its responsibilities and objectives under the Parks Victoria Act 2018 and its Statement of Obligations including *"providing high quality opportunities for visitors to enjoy the parks and reserves, and contributing to the state's visitor economy"* as well as its Strategic Plan goal of *"Connecting People and Nature"*.

Council submitted its role in relation to this matter was as the Planning Authority.

(iii) Discussion

The Panel considers that these submissions are not relevant as they are not 'about the Amendment' and do not raise planning issues. However it considers that some observations should be made. Achieving the right balance between different legislative and often conflicting policy provisions is a challenge. The Panel considers that Council and Parks Victoria have

discharged their responsibilities in relation to the Amendment properly in seeking to reach this balance.

Council has facilitated the Amendment in its role as Planning Authority through the amendment process including the consideration of the objectives of planning in Victoria and a strategic planning assessment. The Panel considers it unreasonable to claim that Council has been impartial or put economic considerations ahead of the environment or the community. No evidence or submissions have substantiated this. The Panel considers that Council has applied a balanced approach to its assessment of the Amendment under the policies and provisions of the Banyule Planning Scheme in an objective way.

Parks Victoria's role is as sponsor of a ropes course through its Expression of Interest Process and as the public land manager. The Panel does not consider that Parks Victoria has confused its different roles or abrogated its land manager role and responsibilities to Council or the requirements of the Incorporated Document. It is not relevant to this Amendment whether or not Parks Victoria have fulfilled their environmental management responsibilities or if they have supported private investment to undertake rehabilitation works that it would otherwise be responsible for. Legislation clearly allows Parks Victoria to lease land where that is consistent with it achieving its wider statutory and strategic objectives. Parks Victoria also have a clear and ongoing role in the Incorporated Document relating to the approval of any alteration or modification of the approved development.

The Incorporated Document does not operate as a de facto set of lease conditions. Ultimately any lease with Parks Victoria will need to address any specific requirements Parks Victoria has. If Parks Victoria does not consider its lease arrangements are being met it can end the lease irrespective of the Incorporated Document, which would effectively have no effect. The Panel does not consider there is any utility in the Incorporated Document specifically referring to the responsibilities of Parks Victoria at Clause 5.0 of the document.

8 Form and content of the Incorporated Document

(i) The issue

The issue is whether other changes should be made to the Incorporated Document.

(ii) Evidence and submissions

In addition to those mentioned elsewhere in this Report, Ms Roberts' without prejudice amendments to Council's Final Incorporated Document included that:

- the operator maintain a website that included a copy of the lease and management plans, authority contact email and phone contacts, current park times and activities, Traditional Owner acknowledgement and related legislation links
- the lease not be issued until the NELP dewatering is finished and tree health stable or until deep soil water horizons are achieved and overland flows managed.

Friends of Banyule suggested a number of changes based on Council's Day 1 Hearing version including deleting the need for a cut and fill plan. This was agreed by Council.

Mr Glossop's evidence included a number of drafting recommendations which were not included in either of the Council or Proponent's Final Incorporated Documents or identified elsewhere in this Report:

- add the words "*is approved*" to condition 6.2(d)
- add to the landscaping conditions where relevant 'works', 'undertaken' and add the public land manager as a party that should be satisfied the landscaping has been maintained
- delete the Notes section.

Council's Day 1 Hearing version of the Incorporated Document and Final Incorporated Document included further changes not discussed elsewhere in this report including:

- consistent capitalising of terms such as 'Incorporated Document', 'Responsible Authority' and specified Plans
- distinguishing conditions that apply to the site as opposed to the subject land
- other minor grammatical, technical or language simplification changes.

(iii) Discussion

The Panel has identified a series of recommended changes to the Incorporated Document in Chapters 4, 5, 6 and 7 and these are not repeated here. This sub-chapter should be read in conjunction with those recommended changes.

The Panel considers that a number of Mr Glossop's suggested changes to the Incorporated Document are appropriate and improve its clarity and the relationship between conditions. It has included a number of them in its Panel preferred version at Appendix D. The Panel agrees that an Incorporated Document should not include notes and while they may well have been included for guidance or to point to other consents required (a practice often used for planning permits), they should be deleted.

The Panel does not support the inclusion of AusNet Transmission Group's condition. It has no relevance on the basis that no works or landscaping are proposed within 60 metres of the Transmission line.

The Panel appreciates that the Friends of Banyule and Ms Roberts have in good faith undertaken a detailed and no doubt time consuming review of Council's Final Incorporated Document in a short time frame and identified an extensive range of additional conditions. While well intentioned, many of the suggested conditions are excessive, unreasonable or are not proportional to what is proposed. More broadly, the operational aspects sought to be managed are addressed in many of the revised conditions of the Incorporated Document or are matters beyond relevant strategic planning considerations.

The Panel supports the majority of changes identified by Council and the Proponent in their respective final versions of the Incorporated Document, many of which have been added to ensure document consistency and simplification where possible. This approach is supported. Where considered appropriate they have been included in the Panel's preferred version.

Council's Final version of the Incorporated Document did not include some of Mr Kern's recommendations and observations including not severing roots greater than 25 millimetres diameter or that no construction vehicles needed to enter the Treetop Activity Area. The Panel considers these suggestions appropriate and has recommended their inclusion. The Panel notes the Environmental Weeds condition is repeated twice and suggests that just condition 6.3 be retained.

The Panel has identified errors and inconsistencies in the use of punctuation and condition wording or structure. While this exercise proved time consuming, it may not have detected all of them. The Panel suggests that Council undertake a thorough check of the Incorporated Document before finalising it to ensure there are no errors, inconsistencies or any unintended consequences. This would include adopting a consistent approach to the numbering and punctuation for sub-conditions.

The Panel observes that amending the Incorporated Document will also require the revised document's new date to be identified in the Schedule to Clause 72.04.

For completeness, the Panel considers that the Incorporated Document appropriately distinguishes between the roles of the Responsible Authority (Council) and the public land manager (Parks Victoria).

(iv) Conclusion and recommendations

The Panel concludes:

- The Incorporated Document should generally be amended to reflect the changes identified in the Council's Final Incorporated Document with further changes as identified in the Panel's preferred version.

The Panel recommends:

Amend the Treetop Adventure Park 340-360 The Boulevard, Ivanhoe East September 2020 Incorporated Document, as shown in the Panel preferred version included in Appendix D, to:

- **Include a range of minor changes to ensure document consistency and clarity.**

Amend the Schedule to Clause 72.04 to include the amended date of the final Treetop Adventure Park Incorporated Document.

Appendix A Submitters to Amendment

No.	Submitter	No.	Submitter
1	Karl Walsh	32	Tim Ebringer
2	Bharathi (no surname provided)	33	Helen Airiyan
3	Simon Mason	34	Nicola Stern
4	Meredith Jay	35	Jonathan Baell
5	Clare Shaw	36	Nadia Costanzo
6	Ken Watkin	37	Paul Ferguson
7	Charles Craig	38	David Chuter
8	Derek Scott	39	Eileen Broadway
9	Cheryl Daye	40	Kelvin W Sun
10	John Merory	41	Rob Young
11	Jonathan Sterchele	42	Allison Williams
12	John Petsas	43	Josephine Carol Turecek
13	Sally Warner	44	Patrick Patterson
14	Sonika (no surname provided)	45	Yarra Precinct Protection Association
15	Richard Nash	46	Alexandra Sinickas
16	Matthew Balgowan	47	Seamus O'Brien
17	Zewen Ma	48	Timothy May
18	Chris Snell	49	Rose Cary
19	Professor John Cary	50	Christine Sinickas
20	Robert Jones	51	Olga (no surname provided)
21	Karen McVean	52	Linton Edwards
22	Dr. Ronald F. Price	53	Geoffrey Schroder
23	Yongqiang (no surname provided)	54	Jess Pinney
24	Penelope Westmore	55	Grace (no surname provided)
25	Carole Rigler	56	Russell Gloster
26	Pip Hauser	57	Joan Zwar
27	Dan Pennefather	58	Monica Zwar
28	Edward Wright	59	Associate Professor Ken Sikaris
29	Belinda Abbott	60	Franca Carrieri
30	Roland W Ebringer	61	Julie Lancashire

No.	Submitter	No.	Submitter
31	Harry Hill	62	Tony Basic
63	Yvonne Zwar	96	Julia Roberts
64	Lee Basic	97	Scott Dare
65	Lyall Haynes	98	Phil Brown
66	Alexander Diamis	99	Georgia White
67	Ruth Goddard	100	Mella Gorman
68	Mark Hayward	101	Sophie Knox
69	Nicki Lees	102	Helen Pereira
70	Chris Lees	103	Ros Smith
71	Elizabeth Lozzi	104	Ala Roshan
72	Rita Ferguson	105	Johanna Verberne
73	Adrienne Mary Patterson	106	Robyn Potter
74	John Fiske	107	Anthony J. Verberne
75	Linda Fiske	108	Liz Pryor
76	Melanie Keely	109	Joe Cardamone
77	Don Stokes	110	Frances Harris
78	Andrew Beevor	111	Kathryn Cummins
79	Barbara Angus	112	David M Gentle
80	Liz Vagg	113	Dennis Gentle
81	Frances Gentle	114	Glenn D Baxter
82	Barbara Smith	115	Claudia Moras
83	Maria Sola	116	Murray White
84	Dirk Snelleman	117	Duncan Nuttall
85	Liz Jones	118	Abi Hector-Taylor
86	Kerry Cue	119	Gideon Polya
87	Frank and Elizabeth Daalder	120	Nigel Corben
88	Virginia Halse	121	Christine Liu
89	Angelo Pierobon	122	Paul Guerra
90	Yik Lim	123	Christian Kairouz
91	Suzanne Lees	124	Tonino Scardamaglia
92	Emily Bieber	125	Emma Mountjoy
93	Wendy Baell	126	Heather Smith
94	Susan Toole	127	Sarah Hunter

No.	Submitter	No.	Submitter
95	Deneille Sutton	128	Tim Forster
129	Neil Andrewartha	162	Christine Tabuteau
130	Annalise Sortino	163	Helen Canty
131	Andrew Warnett	164	Nicole Brown
132	Heidelberg Historical Society	165	Anthony Gleeson
133	Janine Rizzetti	166	Sue McDonough
134	Stephen Platt	167	Joanne Morris-Gibbs
135	Alison Keppel	168	Reg Yates
136	Steve Gilbert	169	Riverland Conservation Society of Heidelberg Inc
137	Rosemary Dusting	170	Tom Talbot
138	John & Olwyn Dore	171	Dr Janice Milhinch
139	Kaye Perkins	172	Andrew Lees
140	Gurli Hughes	173	Joan Powling
141	Amanda Rooke	174	Janelle Sinclair
142	Elaine and Geoff Craddock	175	David Haynes
143	(Margaret) Louise Christie	176	George Secher and Gay Morrison
144	Grant McKenzie	177	K. Hutchens
145	Kevin Reilly	178	Kim Torney
146	David Downing	179	Warringal Conservation Society
147	Peter Drapac	180	James Deane
148	Chris (no surname provided)	181	Andrew Kelly
149	Hayden Warnock	182	Wayne Viney
150	Diana Killen	183	Sue Grieve
151	Adriaan Bendeler	184	Kenny Janice
152	Warren Thomas	185	Yarra Riverkeeper Association
153	Ruth Edwards	186	Greg Stanfield
154	Leanda Merritt	187	Gerard Van Wissen
155	Kate (no surname provided)	188	Jane and Peter Crone
156	Jess (no surname provided)	189	Dr Tim Davis
157	L Myers	190	Brendan Butler
158	John Robarts	191	Sue Course
159	Brad Richards	192	Dr John Russell
160	Rebecca Pinney Meddings	193	Caroline Schwab

No.	Submitter	No.	Submitter
161	Libby Gleeson	194	Sandra Cooper
195	Matthew Goodman	210	Geraldine Ryan
196	Helen Graham	211	Robyn Roberts
197	Thorben Hughes	212	AusNet Services
198	Dr Patricia Tippet	213	Melbourne Water
199	Gareth Moorhead	214	DELWP (Environment)
200	Luisa Ford	215	Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation
201	Belinda Hill	216	Blue Light Victoria
202	Michelle Giovas	217	Nanette Esparon
203	Sandra Mosca		
204	Daphne Hards		
205	Richard McLennan		
206	Jo Towler		
207	Prof Rob Watts and Professor Judith Bessant, AM		
208	Protectors of Public Lands, Victoria Inc.		
209	Alicia Curry		

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Banyule City Council	Terry Montebello of Maddocks
Ecoline Pty Ltd	Barnaby McIlrath of PE Law who called expert evidence from: <ul style="list-style-type: none"> - John Glossop of Glossop Town Planning on planning - Andrew Patrick of Open Space Management on arboriculture - Lincoln Kern of Practical Ecology on ecology, flora and fauna - Ross Hill of One Mile Grid on traffic
Parks Victoria	Provided a written response only
Yarra Precinct Protection Association	Suzanne Lees
Riverland Conservation Society of Heidelberg Inc	Andrew Lees who called expert evidence from: <ul style="list-style-type: none"> - Professor Robert White of Melbourne University on soils - Matthew Daniel of Global Urban Forest and Professor Owen Richards of McGregor Coxall Pty Ltd on water and soil health
Friends of Banyule	Michelle Giovas
Yarra Riverkeeper Association	Andrew Kelly
Warringal Conservation Authority	James Deane
David Gentle	Daniel Robinson of Counsel who called expert evidence from Brett Lane of Ecology Advisory on ecology. Mr Gentle provided a supplementary submission
Alicia Curry	
Elizabeth Vagg	Was unable to appear
Dr John Cary	
Robyn Roberts	
Allison Williams and Rob Young	

Appendix C Document list

No.	Date	Description	Provided by
1	17 Mar 21	Directions Hearing notice	, Panel Chair
2	10 May 21	Email to the Panel advising unable to attend Directions Hearing and requesting their submission be tabled	Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation
3	"	Email to the Panel requesting documents	Ms Curry
4	"	Directions for Council	Panel Chair
5	11 May 21	Directions and Timetable (version 1)	"
6	12 May 21	Request to call Professor Richards as an expert witness	Riverland Conservation Society
7	"	Email to the Panel requesting flood modelling documentation further to Document 3	Ms Curry
8	13 May 21	Email requesting clarity in regard to Document 6	Proponent
9	"	Request to the Riverland Conservation Society to provide clarity in regard to the request to call Mr Richards	Panel Chair
10	14 May 21	Late request to be heard by Yarra Riverkeeper Association	Yarra Riverkeeper Association
11	"	Email advising acceptance of the late request to be heard by Yarra Riverkeeper Association	Panel Chair
12	"	Email in regard to submissions and timetabling clarifying his representation and submission time	Mr Gentle
13	17 May 21	Response by Riverland Conservation Society to Document 9	Riverland Conservation Society of Heidelberg Ince (RCSH)
14	18 May 21	Response to Panel Directions (Document 4)	Council
15	"	Council resolution of 1 March 2021 to refer submissions to a Panel	"
16	"	Response to request for documents of Ms Curry (Document 7)	"
16a	"	City of Banyule Flood Mitigation Assessment	"
16b	"	City of Banyule Flood Mitigation Assessment – Appendix A – Areas Requiring Mitigation	"

No.	Date	Description	Provided by
16c	“	City of Banyule Flood Mitigation Assessment – Appendix I – Salt Creek Catchment – Proposed Mitigation Works	“
16d	“	Pre-development advice from Melbourne Water dated April 2017	“
16e	“	Melbourne Water submission	“
16f	“	Land Subject to Inundation Overlay map	“
16g	“	Council meeting minutes dated 7 October 2019	“
16h	“	Council meeting minutes dated 8 February 2020	“
17	19 May 21	Email advising of representation	Mr Gentle
18	“	Email in response to Document 16	Ms Curry
19	“	Response to Panel Direction 2 for supporting strategies, plans and redacted submissions	Council
20	“	Email to all parties in regard to timetabling and evidence of Professor Richards	Panel Chair
21	21 May 21	Email response to Mr Gentle providing requested Expression of interest	Parks Victoria
22	“	Expression of interest for establishment and operation of Tree Based Eco Adventure Facilities (2009)	“
23	24 May 21	Email requesting the Panel make directions of Council to provide flooding information	Ms Curry
24	27 May 21	Response to Document 23	Council
25a	“	Stormwater Management - Municipality Wide Flood Mitigation Assessment	“
25b	“	Council report dated 17 February 2014	“
25c	“	Banyule Municipality Flood Mapping - Attachment A	“
25d	“	Municipal Flood Mitigation Assessment – Section 4	“
26	“	Response to direction (Document 4)	“
27	“	Response to Documents 19 and 26	Panel Chair
28	31 May 21	Email to all parties in regard to access to all submissions in full	Mr Gentle
29	9 June 21	Email advising engagement of Maddocks Lawyers by Council	Council
30	17 June 21	Email filing supporting material	“
31	“	MLB prepared plan view of reception area and Home Tree decking	“
32	“	Statement of changes to proposal plans	“
33	“	Courses shown on surveyed map	“
34	“	MLB elevation view of reception/shipping container structures	“
35	“	Email advising of expert witnesses to be called by Proponent	Proponent

No.	Date	Description	Provided by
36	23 June 21	Council Part A and Part B submissions	Council
37	"	Appendix 1 – Council reports and attachments	"
38	"	Appendix 2 – Council report and minutes (March 2021)	"
39	"	Appendix 3 – submission themes summary	"
40	"	Appendix 4 – Summary of individual submissions	"
41	"	Appendix 5 – Incorporated Document (Day 1 version)	"
42	"	Appendix 6a – Request for information (DELWP)	"
43	"	Appendix 6b – Request for information (DELWP clarification)	"
44	"	Email circulating video conferencing link	"
45	24 June 21	Directions and Timetable (version 3) Distribution List (version 4)	Panel Chair
46	"	Extension request to file the evidence of Mr Lane	Mr Gentle
47	"	Expert witness statement of Matthew Daniels and Owen Richards	RCSH
48	"	Document 47 Attachment 1 - Arboriculture report prepared for Ecoline Pty Ltd (2018)	"
49	"	CV of Matthew Daniels	"
50	"	CV of Owen Richards	"
51	"	Expert witness statement of Robert White (Soil Science)	"
52	"	Expert witness statement of John Glossop (Planning)	Proponent
53	"	Expert witness statement of Ross Hill (Traffic and car parking)	"
54	"	Expert witness statement of Brett Lane (Ecology)	"
55	25 June 21	Peer reviewed reports of Arborist Report Australia and Ecology and Heritage Partners	Council
56	"	Arboriculture Peer Review Report - Arborists Reports Australia	"
57	"	Ecology Peer Review Report - Ecology and Heritage Partners	"
58	"	Expert witness statement of Andrew Patrick (Arboriculture)	Proponent
59	"	Expert witness statement of Lincoln Kern (Ecology)	"
60	"	Flora and Fauna Assessment of Lincoln Kern	"
61	"	Addendum to Flora and Fauna Assessment of Lincoln Kern	"
62	28 June 21	Email requesting to participate in Hearing process	Friends of Banyule
63	"	Supplementary submission	Parks Victoria
64	"	Council Part A and Part B Submission (Word version)	Council
65	"	Appendix 5 – Council preferred version Incorporated Document	"
66	30 June 21	Panel Hearing Timetable (version 4)	Panel Chair

No.	Date	Description	Provided by
67	"	Submission	Proponent
68	"	Annexure B Operational Management Practices	"
69	"	Annexure C Applicant preferred version Incorporated Document	"
70	"	MLB elevation view of reception area	"
71	"	MLB plan view reception area and Home Tree decking	"
72	"	Statement of changes to site plan document including location of courses, Home Tee location, tree identification, ticket office location	"
73	"	Courses shown on surveyed map	"
74	"	Adventure Forest Go Ape peer review report	"
75	"	High ropes arboriculture report	"
76	"	Yarra River - Bulleen Precinct Advisory Committee submission 19 Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation	"
77	"	Yarra River - Bulleen Precinct Advisory Committee submission 25 Banyule City Council	"
78	"	Yarra River - Bulleen Precinct Advisory Committee submission 35A Parks Victoria	"
79	"	Yarra River - Bulleen Precinct Advisory Committee submission 35B Parks Victoria	"
80	"	Yarra River - Bulleen Precinct Advisory Committee submission 18A Melbourne Water	"
81	"	Yarra River Draft Heritage Scoping Study (2018)	"
82	"	Information Treetops (NSW Central Coast) Cultural Interpretive Material	"
83	"	Correspondence to Wurundjeri Water Unit 11 June 21	"
84	"	Nepean Conservation Group Inc. v Mornington Peninsula SC (Corrected) [2020] VCAT 990	"
85	"	North East Link Project Inquiry and Advisory Committee Report (EES0 [2019] PPV 58	"
86	"	Adventure Forest Pty Ltd v Environment Protection Authority p10 P2851/2010 - VCAT order	"
87	"	Yarra Strategic Plan Panel Report (2020)	"
88	"	Camberlea v Boroondara City Council (2000) VCAT 1999/92829	"
89	"	Flaster v Yarra Ranges Shire Council (2009) VCAT P3221/2008	"
90	"	Great Ocean Road Adventure Park Pty Ltd v Surf Coast Shire Council (2016) VCAT P1763/2015	"

No.	Date	Description	Provided by
91	"	Ecological Assessment of proposed Go Ape course, 55 Purves Road, Arthurs Seat (2010)	"
92	"	Joint presentation (ecology) of Cameron Miller and Patrick Maiden to the North East Link IAC (document 154)	"
93	"	Various images	"
94	"	Yarramundi Tree photo book	"
95	"	Aboriginal Heritage Regulations 2018	"
96	"	Email from Andrew Mellor regarding Banksia Street wetland in Yarra Flats Park (1)	"
97	"	Email from Andrew Mellor regarding Banksia Street wetland in Yarra Flats Park (2)	"
98	"	One page project summary - Annulus and Banksia Street Billabong	"
99	"	Yarra Flats Concept Plan 2013	"
100	"	Submission 213 Melbourne Water	"
101	"	Annulus and Banksia Street Billabongs - Next Steps (Oct 2020)	"
102	"	Site Specific Safety Management Plan - TreeTops	"
103	"	Treetop Adventure Park Sydney The Hills: Standard Operating Procedures	"
104	"	Victorian Environmental Assessment Council: State-wide Assessment of Public Land (2017)	"
105	"	Letter of support from Parks Victoria dated 30 April 2020	"
106	"	Yarra Flats Concept Plan Survey Summary	"
107	"	Yarra Flats Consultation Summary (2021)	"
108	"	Expression of Interest: Establishment and operation of tree based eco adventure facilities (2009)	"
109	"	Banyule Planning Scheme – Clause 21_mss02	"
110	"	Banyule Planning Scheme – Clause 36_03	"
111	"	Banyule Planning Scheme - Clause 42_01s01	"
112	"	Banyule Planning Scheme - Clause 2_01s04	"
113	"	Banyule Planning Scheme - Clause 42_03s01	"
114	"	Banyule Planning Scheme - Clause 45_06s01	"
115	"	340-680 The Boulevard Ivanhoe East Vicplan Planning Property Report	"
116	"	River Red Gum Biochemistry	"
117	"	River Red Gums Riverina Environmental Education Centre 2014	"

No.	Date	Description	Provided by
118	"	Eucalyptus Camaldulensis CSIRO	"
119	02 July 21	Tree photo book prepared by Mr Patrick	"
120	"	Various wildlife images	"
121	"	Council Report for 340-680 The Boulevard, Ivanhoe East - Amendment C107bany Outdoor Recreation Facility dated 7 October 2019	Council
122	"	Attachments to Council Report (Document 12)	"
123	"	Submission Themes Summary	"
124	"	Summary of Individual Submissions	"
125	"	Email on surveyed map 150621_A4_V10A without tree canopy and response to Ms Curry's queries (document 120)	Proponent
126	"	Courses on surveyed map 150621_A4_V10A (no canopies)	"
127	"	Statement of Significance - Eaglemont Yarra Flats, 340-680 The Boulevard	Council
128	"	Internal Referral Response VHD - Yarra Flats	"
129	"	Response to request of Ms Curry for further documentation including survey course plans, dispersal trench and accessible versions of Council's documents	Panel Chair
130	"	Council Part C Submission	Council
131	4/07/21	Covering Email for Councils amended Part C submission	"
132		Amended Council Part C submission	"
133	6/07/21	Plans of ground level part of course	Proponent
134	"	Submission of Yarra Precinct Protection Association	Yarra Precinct Protection Association
135	"	Submission	Dr Cary
136	"	Submission	Ms Roberts
137	"	Attachments to Document 136	"
138	"	Additional documents referred to or requested during Hearing	Proponent
139	"	Examples of Land Use Activity Agreement (LUAA) under the <i>Traditional Owner Settlement Act 2010</i>	"
140	"	Map of area covered by LUAA	"
141	"	Various documents and maps regarding tree loss and replanting for (NELP)	"
142	"	Incorporated Document for NELP	"
143	"	Evidence statement of Mr Lane for NELP	"

No.	Date	Description	Provided by
144	"	Document highlighting examples of SCO being applied to public land	"
145	"	NELP EES - Technical Report Q Appendices (Ecology)	"
146	"	NELP EES - Technical Report Q Figures (Ecology)	"
147	"	Submission	Warringal Conservation Society
148	07/07/21	URL to 1945 Melbourne webpage	Proponent
149	"	Submission	Friends of Banyule
150	"	Link to video of Banksia Billabong	"
151	"	Article: Banyule Homestead plans slapped by VCAT – Realestate.com	Ms Roberts
152	"	Submission	RCSH
153	"	Submission	Yarra Riverkeeper Association
154	"	Slide presentation	Warringal Conservation Society
155	"	Email with photos of Banksia Billabong	RCSH
156	8/07/21	Yarra Flats Concept Plan - Survey of 20 April 2012	Parks Victoria
157	"	Email advising Ms Vagg will no longer present at the Hearing	Ms Vagg
158	"	Submission	Mr Young
159	"	Letter from The Hon Lisa Neville MP and Minister for Water to Ms Roberts regarding Yarra Flats Park and consideration of the YRP Act protection principles	Ms Roberts
160	"	Letter from the Hon. Bruce Atkinson MLC to Ms Roberts regarding the Amendment process	"
161	"	Soil analysis results of Professor White	RCSH
162	"	Submission	Mr Gentle
163	"	Slide version of Mr Gentle's submission	"
164	"	Council's Final Incorporated Document – clean version	Council
165	"	Council's Final Incorporated Document – tracked version	"
166	"	PowerPoint Presentation	Yarra Riverkeeper Association
167	"	PowerPoint Presentation	RCSH

No.	Date	Description	Provided by
168	"	Soil and Tree Health Presentation (Daniel and Richards)	"
169	"	Yarra Flats Region Environment and Water Presentation (Daniel and Richards)	"
170	"	Incorporated Document – tracked	Friends of Banyule
171	"	Incorporated Document – tracked	Ms Roberts
172	9/07/21	Closing submission	Council
173	"	Closing submission	Proponent
174	"	Contour plan	"
175	"	Directory of important wetlands	"
176	"	Bulleen Land Use Framework Plan - Aboriginal Cultural Heritage Assessment	"
177	"	Email chain and attachments between Ms Jobing and Mr Dansin dated 11 June 2021	"
178	"	NELP – Environmental Management Framework dated 23 January 2021	"
179	"	Sunbury Rings Statement of Significance	"
180	"	Courses of surveyed map - version 12	"
181	"	Email in relation to the Banyule Flats Area	Friends of Banyule
182	13/07/21	Email filing material requested by the Panel (Documents 183 and 184)	Proponent
183	"	Aerial image of Billabongs	"
184	"	Excerpt from the Witness Statement of Mr Kern – Aerial map of Billabongs	"
185	"	Proponent's Final Version of the Incorporated Document Marked-up version of Council's Clean Version)	"
186	"	Email filing submission and attachments	Ms Curry
187	"	Submission	"
188	"	Attachment 1 - Photos Purves Road, Arthurs Seat	"
189	"	Attachment 2 - North East Link Project details	"
190	"	Attachment 3 - Road Network	"
191	"	Attachment 4 – Signage	"
192	"	Attachment 5 - Stormwater & Risk	"
193	"	Attachment 6 - Preliminary Signage Strategy June 2017	"

Appendix D Panel preferred version of the Incorporated Document

Tracked Added

~~Tracked Deleted~~

**BANYULE PLANNING SCHEME
Incorporated Document**

**Treetop Adventure Park
340-680 The Boulevard, Ivanhoe East**

~~September 2020~~ Insert new date

This document is an Incorporated Document in the Banyule Planning Scheme pursuant to Section 6(2)(j) of the *Planning and Environment Act 1987*

1.0 INTRODUCTION

This document is an Incorporated Document in the Schedules to 45.12 and 72.04 of the Banyule Planning Scheme (the scheme).

The land identified in Clause 3.0 of this document may be used and developed in accordance with the specific controls contained in Clauses 5.0 and 6.0 of this Document.

The provisions of this document prevail over any contrary or inconsistent provision in the scheme.

2.0 PURPOSE

The purpose of this Incorporated Document is to allow the use and development of the land described in Clause 3.0 of this Incorporated Document for an outdoor recreation facility (treetop adventure park), removal of native vegetation and display of advertising signage, generally in accordance with the plans forming part of this Incorporated Document and subject to Clause 6.0 of this Incorporated Document.

3.0 ADDRESS OF THE LAND

This document applies to part of the land within the Yarra Flats Park, 340 to 680 The Boulevard, Ivanhoe East, which is affected by Specific Controls Overlay 13 (SCO13) and which is more particularly identified as Subject Site in Figure 1 below.

The Subject Site is described as:

- The eastern portion of Crown Allotment 2E within the Parish of Keelbundora, created by instrument M1121222X, in Crown Diagram CD048476M; and
- The north-eastern portion of Crown Allotment 2H within the Parish of Keelbundora, created by instrument M1121225R, in Crown Diagram CD048477K.



Figure 5: Land subject to this incorporated document outlined in blue

4.0 EXEMPTION FROM PLANNING SCHEME PROVISIONS

Despite any provision to the contrary or any inconsistent provision in the scheme, no planning permit is required for, and no planning provision in the scheme operates to prohibit, restrict or regulate the use and development for the purposes of the development allowed by this document.

5.0 WHAT THIS DOCUMENT ALLOWS

This Incorporated Document allows for the area identified as Treetop Activity Area ([the site](#)) to be used and developed for an outdoor recreation facility (treetop adventure park), removal of native vegetation and display of advertising signage and for access, car parking and signage associated with the permitted use and development to occur within the broader area identified as [the](#) Subject Site, generally in accordance with the Incorporated Plans listed below and those referenced in clause 6.0 of this Incorporated Document.

The Incorporated Plans include any plan, document or report required to be approved under Clause 6.0 and also includes the following:

- Treetop Adventure Park Site Plan dated 15 June 2021 Version 10 as shown in Figure 2
- Site Plan - Administration Offices prepared by Josh Clarke dated 15 June 2021 (Amendment C Revision 2) [modified to show the location of the reception/ticketing and harnessing areas](#)
- Elevations prepared by Josh Clarke dated 15 June 2021 (Amendment C Revision 2)
- ~~Chapter 8 and Chapter 9 of the Practical Ecology~~ Flora and Fauna Assessment, [Native Vegetation Impact Assessment and Land Management Plan, Yarra Flats Treetop Adventure Park, Ivanhoe East, 21 June 2021](#) ~~Practical Ecology, [insert new date]~~ [\(the Flora and Fauna Assessment\)](#)
- Arboricultural Tree Health and Hazard Assessment, Treetop Adventure Park, Yarra Flats prepared by Advanced Treescape Consulting, dated 31 August 2018 with addendum dated 25 February 2019 [by Advanced Tree Consulting \(the Arboricultural Tree Health and Hazard Assessment\)](#)
- ~~Preliminary~~ Signage Strategy Treetops at Yarra Flats by Treetops dated ~~June 2017~~ [\[insert new date\]](#)

and including any amendment of the documents forming the Incorporated Plans that may be approved by the Responsible Authority from time to time under the clauses of this Incorporated Document or any changes that may be required by an approved Cultural Heritage Management Plan.



Figure 6: Treetop Adventure Park Site Plan

6.0 THE FOLLOWING CONDITIONS APPLY TO THIS DOCUMENT:

General

- 6.1 The development as shown on the 'Incorporated Plans' including signage must not be altered or modified except with the written consent of the public land manager and the Responsible Authority.
- 6.2 Unless otherwise agreed in writing by the Responsible Authority, the use and development allowed by this Incorporated Document must not commence until:
- The Tree Management & Protection Plan as required by Condition 6.7 is approved by the Responsible Authority.
 - The tree protection measures required by the approved Tree Management and Protection Plan are installed to the satisfaction of the Public Land Manager and the Responsible Authority.
 - The Construction Management Plan as required by Condition 6.28⁹ is approved by the Responsible Authority.
 - A separate application, direct to Melbourne Water, is made for any new or modified storm water connection to Melbourne Water's drains or watercourses as required by Condition 6.34⁷ is approved.
 - A Flood Management Plan for the Treetop Activity Area has been prepared to the satisfaction of Melbourne Water as required by Condition 6.35_.
 - An agreement entered into with Melbourne Water and Parks Victoria as per condition 6.38⁴¹_.

- (g) A Fauna Management Plan has been prepared to the satisfaction of the Responsible Authority as required by condition 6.6.
- (h) A Parking Plan has been prepared to the satisfaction of the Responsible Authority as required by condition 6.22.
- (i) A Green Travel Plan has been prepared to the satisfaction of the Responsible Authority as required by condition 6.234.
- (j) A Safety Management Plan for operation of the Treetop Activity Area to address risk management, customer training and team member training for safety and emergency management to the satisfaction of ~~Parks Victoria~~ the public land manager.
- ~~(l) A Cultural Heritage Management Plan has been approved for the activity in accordance with the Aboriginal Heritage Act 2006.~~
- (k) The plan identifying the shipping containers is to be amended to show that the shipping containers as being clad in timber and that any painted or coloured surfaces of the administration area structures be finished in muted tones to the satisfaction of the Responsible Authority.

Landscaping and restoration plan

- 6.3 No environmental weeds as identified in “Banyule Weed Management Strategy 2006” and the “Yarra River Frontage Weed Action Plan 2007” shall be planted on the site or allowed to establish and the site must be managed and maintained to exclude those weeds.
- 6.4 All landscaping works, revegetation and supplementary planting must be undertaken generally in accordance with measures recommended in Chapters 8 and 9 of the ~~Practical Ecology~~ Flora and Fauna Assessment, ~~dated 21 June 2021~~.
- 6.5 Landscaping works set out Chapters 8 and 9 of the Flora and Fauna Assessment ~~dated 21 June 2021~~ must be carried out and then maintained to the satisfaction of the public land manager and Responsible Authority.

Fauna Management Plan

- 6.6 A Fauna Management Plan (**FMP**) to the satisfaction of the public land manager must be submitted to, and approved in writing by, the Responsible Authority. When approved the FMP will form part of this Incorporated Document. The FMP must address the requirement for baseline and ongoing monitoring of the use of the site by both significant fauna and common wildlife ~~locally occurring fauna~~, as well as measures to mitigate any potential impacts of the proposal ~~impacts to individuals/populations should these species occur~~.

Tree Management & Protection Plan

- 6.7 A Tree Management & Protection Plan (**TMPP**) to the satisfaction of the public land manager and in accordance with condition 6.8, must be submitted to, and approved in writing by, the Responsible Authority. The TMPP must be prepared by suitably qualified and experienced arborists and ecologists in relation to the management and maintenance of all retained trees within the site. When approved, the TMPP will form part of this Incorporated Document.
- 6.8 The TMPP must include and provide for (but not be limited to):
 - (a) The management and protection of trees generally in accordance with AS4970-2009 and the recommendations contained in Chapter 8 and 9 of the ~~Practical Ecology~~ Flora and Fauna Assessment, ~~June 2021~~

- (b) All aerial devices and platforms to be affixed in place by minimising any punctures to any trees;
- (c) Any recommended down time for particular trees to be rested from time to time;
- (d) The design modifications and particular construction/assembly techniques set out in the [Arboricultural Tree Health and Hazard Assessment](#) ~~Arborist~~ ~~Report authored by Russell Kingdom 31/08/2018;~~
- (e) Measures proposed for tree protection and the identification of those trees which are to be subject to an [established](#) Tree Protection Zone (TPZ);
- (f) The types of footings which may only be installed within TPZs;
- (g) Details of how root systems of the trees within TPZ's are to be managed;
- (h) What extent of canopy works such as pruning are proposed (noting limits on canopy pruning set out in this Incorporated Document);
- (i) Any initial remedial pruning works that is required;
- (j) Supervision timetable and certification (sign off sheet) of tree management activities undertaken by the suitably qualified project arborist to the satisfaction of the Responsible Authority;
- (k) All areas where ground protection systems will be installed;
- (l) Any services are to avoid being located within a TPZ;
- (m) The TMPP must also provide for:
 - (i) A suitably qualified project arborist to supervise any activity within any TPZ.
 - (ii) A suitably qualified project arborist must be present during any excavation works within any TPZ.
 - (iii) Any root severance or works within a TPZs must be carried out so as to not adversely impact the health and or stability of the tree. [No roots over 25 millimetres in diameter may be severed.](#)
- (n) Any weeds located within a TPZ are to be removed and the area managed in accordance with the approved TMPP and Landscape and Restoration Plan to the satisfaction of the Responsible Authority.
- (o) Any proposed protective fencing.
- (p) During construction of the development where a Tree Protection Zone is to exclude access, fixed signs are to be provided on all visible sides of any Tree Protection Fencing, stating "Tree Protection Zone – No entry without permission from Banyule City Council".
- (q) Appropriate ground protection measures.
- (r) A management regime for all trees during the preparation, construction and post-construction phases of the development. Matters to be addressed, as appropriate:
 - (i) ~~T~~he location/design of tree protection fencing
 - (ii) ~~M~~ulching/ watering requirements
 - (iii) ~~R~~equirements regarding any suitable excavation

- (iv) ~~W~~eed removal/control measures
- (v) ~~O~~ngoing maintenance regime of apparatus attached to trees
- (vi) Emergency works/response procedure

- (s) Cabling if any, ~~and~~
- (t) Inspection for tree hollows to be undertaken prior to the construction process.
- (u) A detailed monitoring regime.
- (v) Consideration of arboricultural best practice in designing and selecting apparatus to attach course components, such as platforms, such that the use of punctures if further avoided.
- (w) Retention of pruned deadwood, logs and hollows either within the Treetop Activity Area or Subject Site.

~~The TMPP must have regard to the recommendations contained in Chapter 8 and 9 of the Practical Ecology Flora and Fauna Assessment dated June 2021.~~

- 6.9 The approved TMPP must be implemented to the satisfaction of the Responsible Authority. Written confirmation from a suitably qualified project arborist that all measures identified in the TMPP have been implemented prior to the commencement of the use must be provided to the satisfaction of the Responsible Authority.

Works

- 6.10 Except with the consent of the Responsible Authority, all buildings and works for the construction of the development (as shown on the plans forming part of this Incorporated Document) must not alter the existing ground level or topography of the land.

Tree Protection / Landscaping

Tree Protection Zone

- 6.11 Unless otherwise agreed in writing by the Responsible Authority, prior to the commencement of works on the site ~~the any~~ TPZ's identified in the TMPP must be established. At least 14 days prior to the commencement of works a 'Statement of Compliance' (from a suitably qualified project arborist) which must include photographic evidence of requirements to the satisfaction of the Responsible Authority ~~6.10(d). This correspondence must be sent to enquiries@banyule.vic.gov.au.~~ Once installed the TPZ must be maintained until the conclusion of works to the satisfaction of the Responsible Authority.

Native vegetation removal and offsets

6.12 Prior to the removal, lopping or destruction of any native vegetation:

- (a) The proponent must secure the specific offset amount of 0.168 species of habitat units of habitat for grey-headed flying fox *Pteropus poliocephalus*.
- (b) Evidence of a security agreement for the offset (including an Offset Management Plan) must be provided to the satisfaction of the Responsible Authority.

- 6.13 Any native vegetation removal approved by this Incorporated Document must ~~be in accordance with:~~

- (a) Be undertaken in accordance with: ~~Chapter 8 and Chapter 9 of the Practical Ecology Flora and Fauna Assessment dated June 2021~~ including being no more than:

(i) 0.029 hectares of total loss; and

(ii) 0.38 hectares of partial loss.

(b) Avoid the lopping of trees containing hollows.

- 6.14 No additional native vegetation (other than that approved by this Incorporated Document or exempt from planning permission under the provisions of the Banyule Planning Scheme) shall be damaged, removed, destroyed or lopped ~~without the further written consent of the Responsible Authority.~~

Pruning to Australian Standards

- 6.15 All tree pruning is to be carried out by a trained and competent arborist who has a thorough knowledge of tree physiology and pruning methods. Pruning should generally be carried out in accordance with Australian Standard AS4373 *Pruning of Amenity Trees* but subject to the desirability of avoiding the removal of any tree hollows to the satisfaction of the Responsible Authority. Tree pruning must not result in the removal of more than 15 per cent % of the total live canopy of each individual tree.

Extent of Pruning

- 6.16 Pruning of trees is to be restricted to the removal of deadwood and minor weight reduction, unless in accordance with the approved TMPP and to ensure the historic viewlines are not interrupted, to satisfaction of the Responsible Authority.

Amenity

- 6.17 The site must be kept neat and tidy at all times and its appearance must not, in the opinion of the Responsible Authority, adversely affect the amenity of the locality.
- 6.18 Outdoor lighting must be kept to a minimum and designed, baffled and located to the satisfaction of the Responsible Authority such that no direct light is emitted outside the boundaries of the site. Any lighting must be turned off outside operating hours.
- 6.19 All rubbish bins must have self-closing lids and/or be designed to withstand the effects of wind and access by birds, vermin and foxes.
- 6.20 Sound amplification equipment or loudspeakers must not be used in outside areas.

Hours of Operation

- 6.21 Except with the prior written consent of the Responsible Authority, the use allowed by this document may only operate between the following times:
- (a) 9:00am – 6.00pm daily from ~~between the~~ 25 September ~~to~~ and 26 April inclusive, except Christmas Day, ~~until 6.00pm;~~
 - (b) On any other day, except Christmas day: 9.00am – 4.30pm daily;
 - (c) Notwithstanding parts a) and b) the use must be closed to the public on days of declared Extreme and Code Red fire danger;
 - (d) The use must not operate on Christmas Day;
 - (e) The hours of operation shall be clearly displayed at the entrance to the site to the satisfaction of the Responsible Authority -

except that emergency maintenance may be undertaken at any time.

Car, bus and bicycle ~~P~~arking / Access

- 6.22 A Parking Plan which shows bicycle, car and bus parking areas to be provided or used to the satisfaction of the Responsible Authority, must be submitted to, and

approved in writing by, the Responsible Authority. Areas set aside for the parking and movement of vehicles (including any bus parking) must be kept clearly line marked to the satisfaction of the Responsible Authority. Bicycle parking areas must be clearly designated.

- 6.23 A Green Travel Plan to the satisfaction of the Responsible Authority, must be submitted to, and approved in writing by, the Responsible Authority. The Green Travel Plan must demonstrate how the business will encourage the use of sustainable transport by visitors and staff and provide for bicycle parking. This should include the use of Public Transport and cycling routes to and from the Subject Site.

Signage

- 6.24 The location and details of the sign(s) and sign structure(s) including colours and materials must be generally in accordance with the signage shown ~~in~~ the ~~Preliminary~~ Signage Strategy Treetops at Yarra Flats by Treetops dated ~~June 2017~~ [insert new date].
- 6.25 Flashing or intermittent lighting must not be used in the sign(s) permitted by this Incorporated Document.
- 6.26 The sign(s) permitted by this document must not be floodlit or illuminated by external lights except with the prior written consent of the Responsible Authority.
- 6.27 The sign(s) permitted by this document must be maintained in good condition to the satisfaction of the Responsible Authority.

Construction Management Plan

- 6.28 Before the development starts, a Construction Management Plan (**CMP**) ~~(three copies)~~, to the satisfaction of the Responsible Authority, must be submitted to and approved by the Responsible Authority. When approved, the plan will form part of this Incorporated Document. The CMP must address the following matters:
- (a) ~~M~~measures to minimise the impact of construction vehicles arriving at, queuing, and departing from the site. No construction vehicles are to enter the Treetop Activity Area;
 - a) ~~M~~measures to accommodate the private vehicles of workers/ tradespersons;
 - b) ~~A~~a prohibition of non-native animals such as dogs on the site;
 - c) ~~D~~etails of the location of all construction equipment and facilities, including delivery points, storerooms, toilets, temporary offices and workers' facilities;
 - d) ~~M~~measures to minimise the generation and dispersal of dust;
 - e) ~~M~~measures to avoid or minimise impacts to native vegetation and fauna habitat;
 - f) ~~M~~measures to avoid or minimise soil disturbance;
 - g) ~~D~~etails of a 24 hour hotline for access to a contact person or project manager accountable for the project and compliance with the CMP;
 - h) ~~A~~arrangements for waste collection and other services to be provided during construction;
 - i) ~~M~~measures to ensure that during construction, vehicles, machinery and equipment, and construction materials including fill brought to the site are free of weeds and pathogens to prevent the introduction and spread of weeds and pathogens, in particular Cinnamon Fungus (*Phytophthora cinnamomi*).

- j) ~~M~~measures as necessary to the satisfaction of the Responsible Authority to address any matters set out in an approved cultural heritage management plan.
- 6.29 Before any road and drainage works associated with the development start, detailed construction plans to the satisfaction of the Responsible Authority and the public land manager must be submitted to and approved by the Responsible Authority. When approved, the plans will form part of this Incorporated Document. The detailed construction plans must be drawn to scale with dimensions and three copies must be provided. All development and works constructed or carried out must be in accordance with the plans forming part of this Incorporated Document.

Barbeques and fireplaces

- 6.30 No barbeques or fireplaces are to be installed and used within the area identified as Treetop Activity Area.

Environmental Weeds

- ~~6.31 No environmental weeds as identified in “Banyule Weed Management Strategy 2006” and the “Yarra River Frontage Weed Action Plan 2007” shall be planted on the site or allowed to invade the site and the site must be managed and maintained to exclude weeds.~~

Transmission Line

- ~~6.31 Any proposed development including roads, earthworks or landscaping within 60 metres of the Transmission line must be referred to AusNet Transmission Group for approval prior to the commencement of any works on site.~~

Completion of External Ropes Course

- 6.31 Before the use starts, or by such later date as is approved by the Responsible Authority in writing, the external ropes course, including all stations and ancillary structures and connecting pathways, as shown on the plans forming part of this Incorporated Document must be completed to the satisfaction of the Responsible Authority.

Melbourne Water Conditions

- 6.32 Prior to the endorsement of plans, a ~~F~~flood ~~M~~management ~~P~~plan must be submitted to the satisfaction of the Responsible Authority and Melbourne Water ~~addressing Melbourne Water's conditions~~. The ~~F~~flood ~~M~~management ~~P~~plan must be prepared on the assumption that the proposed outdoor recreation facility will be located for the term of its lease or unless otherwise required to be removed or abandoned.
- 6.33 The two new shipping containers used for administration and temporary storage must be anchored to the ground to the satisfaction of the Responsible Authority and Melbourne Water so as to avoid being washed away by flood water in large storm event. The shipping containers must only be used for the administration and temporary storage of equipment necessary for the operation of the ropes course, noting that they will be subject to frequent and significant inundation from the Yarra River.
- 6.34 Prior to the commencement of works, a separate application, direct to Melbourne Water, must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses. Prior to accepting an application, evidence must be provided demonstrating that the Responsible Authority considers that it is not feasible to connect to the local drainage system.
- 6.35 Any earthworks must be done such that the volume of cutting within the floodplain is equivalent or greater than the volume of filling (i.e. balance cut and fill). Prior to the commencement of works, all reports, computations and assessments required by

Melbourne Water must be submitted to the satisfaction of Melbourne Water for approval.

- 6.36 Any new fencing or gates within the flood-affected area must be open style (50 [per cent](#) %) of construction up to 600mm above the flood level or timber paling, to allow for the conveyance of overland flow.
- 6.37 Any external decking or stairs within the flood-affected area must be constructed with unenclosed foundations (i.e. treads and stringers only, no risers on the stairs), and remain open underneath into the future, to allow for the passage of overland flows.
- 6.38 Prior to the commencement of works, an agreement must be entered into by the operator of the use with Melbourne Water and Parks Victoria to provide for the following:
- (a) Disclosure of the likely future inundation to the ropes course area. Agreement on the management regime of the ropes course/billabong area including the timing, frequency and notice period regarding Melbourne Water's release of flow into the billabongs;
 - (b) Agreement on access arrangements for the billabong areas; and
 - (c) The shipping containers must only be used for administration and the temporary storage of equipment and administration as reasonably necessary for the operation of the ropes course.

7.0 EXPIRY OF PROVISIONS

- 7.31 This Incorporated Document will expire if any of the following circumstances apply:
- (a) The development is not started within two years of the approval date of Amendment C107bany.
 - a) The development is not completed within four years of the approval date of Amendment C107bany.

The expiry dates may be extended by consent of the Responsible Authority if a request is made in writing before this Incorporated Document expires.

~~These notes below are explanatory only and do not form part of this Incorporated Document.~~

8.0 NOTES

~~8.31 Memorandum of Consent for Works~~

~~Council's Construction Department must supervise all works undertaken on Council assets within private property, Council Reserves, easements, drainage reserves and/or road reserves, including connection of the internal drainage system to the existing Council assets. Prior to the commencement of any works, an application must be made and a permit received for:~~

- ~~• A "Memorandum of Consent for Works" for any works within the road reserve; and/or~~
- ~~• A "Drainage Connection Permit" for any works other than within a road reserve.~~

~~8.32 Building Permit Required~~

~~A Building Permit must be obtained prior to the commencement of any works associated with the proposed development.~~

~~8.33 Asset Inspection Fee~~

~~Prior to the commencement of building works on site in accordance with Local Law 1, a non-refundable Asset Inspection Fee is payable to Council for the inspection of existing Council assets. For further information in relation to this process and the relevant fee please contact Council's Construction Department on 9490 4222.~~

~~8.34 Building Site Code of Practice~~

~~All construction works must comply with the requirements of the 'Building Site Code of Practice – Banyule City Council'. A copy of the Code is available on the Banyule City Council website or at Council Service Centres.~~

End of Document